129-530

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885

No. ~~328.~~ 65

GEORGE M. PETERS, APPELLANT,

vs.

THE ACTIVE MANUFACTURING COMPANY.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED OCTOBER 3, 1885.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Cost bond	10	4
Subpœna	11	5
Marshal's return	12	5
Appearance for respondent	13	6
Answer	13	6
Replication	18	9
Stipulation as to testimony and exhibits	20	9
Evidence for complainant	21	10
Testimony of M. F. Hackman	22	10
James H. C. Snellen	35	16
C. D. Firestone	41	19
Oscar G. Peters	44	20
E. H. Mooney	46	21
Notary's certificate	49	22
Evidence for defendants	51	23
Testimony of Joseph P. Noyes	51	23
Frederick Yingling	62	27
Amended answer	67	30
Affidavit of George Monteith	69	31

JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 14, 1887.

	Original.	Print.
Evidence for defendants	70	31
Testimony of Wm. C. Peel	71	32
Affidavit of Wm. C. Peel	88	39
Notary's certificate	90	40
Testimony of John T. Richmond	91	40
Lowe Emerson	102	45
John W. Fisher	116	50
Henry Staver	131	57
Valentine Fleckstein	144	62
Exhibit—Letter of J. W. Fisher to C. E. Brown, and stipulation as to same	157	67
Evidence for complainant	160	68
Notice to take testimony	160	68
Testimony of Wm. Knapp	161	69
Peter Newman	165	70
John Coyle	167	71
Andrew McAuley	169	72
James W. McCurley	173	74
George Huber	207	87
John N. Dornseifer	216	91
Joseph N. O. Grear	223	94
John Glen	254	106
John Scollins	262	109
Patrick Morrissey	273	113
Joseph A. Schoenberger	280	116
Notary's certificate	288	119
Testimony of C. D. Firestone	291	120
Oscar G. Peters	301	124
Edwin H. Mooney	304	125
George M. Peters	311	129
Notice and notary's certificate	318	132
Amended answer	321	133
Notice and schedule of patents	323	133
Letters patent No. 122,996 granted John Curtis, Jan. 23, 1872	325	134
Letters patent No. 148,746 granted Peel & Elster, March 17, 1874	332	136
Letters patent No. 178,463 granted Geo. M. Peters, June 6, 1876	338	138
Defendant's Exhibit C.—Sketch	346	141
Decree	347	141
Appeal bond	348	142
Order as to bond	349	142
Supersedeas bond	350	142
Clerk's certificate	353	144
Citation	354	144
Proof of service of citation	355	144

1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and western division of the southern district of Ohio, begun and held at the court-rooms, in the city of Cincinnati, on the first Tuesday of October, being the seventh day of that month, in the year of our Lord one thousand eight hundred and eighty-four, and in the one hundred and ninth year of the Independence of the United States of America—present, the Honorable George R. Sage, district judge—among the proceedings had were the following, to wit:

GEORGE M. PETERS
vs.
ACTIVE MANUFACTURING CO. } In Equity. 3206.

Be it remembered that heretofore, to wit, on the 3rd day of January, in the year of our Lord one thousand eight hundred and eighty-two, came the complainant, by his solicitors, and filed in the clerk's office of the court aforesaid a certain bill of complaint in this cause, which bill of complaint is in the words and figures following, to wit:

2 *Bill of Complaint.*

Circuit Court of the United States for the Western Division of the Southern District of Ohio. In Equity.

GEORGE M. PETERS *vs.* ACTIVE MANUFACTURING CO.

To the honorable the judges of the circuit court of the United States for the western division of the southern district of Ohio:

George M. Peters, a citizen of the State of Ohio, and residing at Columbus, in said State, brings this his bill of complaint against the Active Manufacturing Company, a corporation organized under and by virtue of the laws of the State of Ohio, and as such having its principal office in the city of Cincinnati, Hamilton county, Ohio, and thereupon your orator complains and says:

That on and prior to the 6th day of June, A. D. 1876, he was the original and first inventor of a certain improvement in tools for attaching sheet-metal mouldings, fully described in the letters patent hereinafter mentioned, and which had not been known or used before his said invention and which, at the time of his application for a patent as hereinafter mentioned, had not been for more
3 than two years in public use or on sale with his consent and allowance.

And your orator further shows unto your honors that your orator, being so as aforesaid the first inventor and discoverer of said improvement, and being also a citizen of the United States, did, on the 6th day of June, A. D. 1876, upon due application therefor, obtain letters patent of the United States for said invention in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 178,463, whereby there was granted

and secured to your orator, his heirs, administrators, or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full, exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and improvement as set forth in said letters patent, which are now of record in the Patent Office of the United States, and by virtue whereof your orator became and now is the sole owner of all the rights and privileges granted and secured or in-
4 tended to be granted and secured in and by the said letters patent, as by said letters patent or a duly authenticated copy thereof, here in court to be produced, will more fully appear.

And your orator further shows unto your honors that by virtue of the premises your orator became and now is the sole and exclusive owner of said letters patent and the inventions and improvements described therein, and of all the rights and privileges granted and secured or intended to be granted and secured thereby; and that since he became the owner thereof as aforesaid he has invested and expended large sums of money and been to great trouble in and about said invention and for the purpose of using said invention in applying moldings to dashes for vehicles and in making the same profitable to himself and useful to the public; and that said invention has been and is of great benefit and advantage; and that great numbers of moldings have been put upon dashes for vehicles by the use of said invention by the Peters Leather Dash Company and the Columbus Buggy Company, of the city of Columbus, Ohio, and of which firm your orator is a member, to great advantage to the pub-
lic; and that the public have generally acknowledged and
5 acquiesced in the aforesaid rights of your orator, and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendant and its confederates shall be prevented.

Yet the said defendant, well knowing the premises and the rights secured to your orator aforesaid, but contriving to injure your orator and to deprive him of the benefits and advantages which might and otherwise would accrue unto him from said invention, after the issuing of the letters patent as aforesaid and before the commencement of this suit, did, as your orator is informed and believes, without the license or allowance and against the will of your orator and in violation of your orator's rights and in infringements of the aforesaid letters patent No. 178,463, unlawfully and wrongfully and in defiance of the rights of your orator, make and use the said invention in applying moldings on dashes for vehicles in great variety and quantity, and sold the said dashes and supplied the market therewith, and that it is still threatening to use and does use the same to a great extent—

All in defiance of the rights acquired by and secured to your orator as aforesaid and to his great and irreparable loss and
6 injury, and by which he has been and still is being deprived of great gains and profits which he might and otherwise would have obtained, but which have been received and enjoyed

and are being received and enjoyed by the said defendant by and through its aforesaid unlawful acts and doings.

And your orator further shows unto your honors, on information and belief, that said defendant, The Active Manufacturing Company, has sold large quantities of dashes with moldings put on by the use of said invention and has a large quantity of said work on hand, which it is offering for sale, and has by the use of said invention made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know and prays a discovery thereof; and your orator says that the use of the said invention by said defendant and its preparation for and avowed determination to continue the same and its other aforesaid unlawful acts in disregard and defiance of the rights of your orator have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

7 And your orator further shows unto your honors that he has caused notice to be given to said defendant of said infringements and of the rights of your orator in the premises and requested it to desist and refrain therefrom, but it has disregarded said notice and refused to desist from said infringements, and still continues to *to* use the said invention in fitting moldings to dashes in great quantities.

And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, upon its oath and according to its best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by it acquired and the damages suffered by your orator from the aforesaid unlawful acts.

And your orator prays that said defendant, The Active Manufacturing Company, and its servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined,

8 provisionally and perpetually, by the order and injunction of this honorable court, from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use or in anywise counterfeiting or imitating the said invention or any part thereof or any tools for attaching sheet-metal moldings as aforesaid made in accordance therewith or like or similar to those which it has heretofore made, and that the said defendant may be decreed to pay the costs of this suit, and that your orator may have such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendant, The Active Manufacturing Company,

and secured to your orator, his heirs, administrators, or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full, exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and improvement as set forth in said letters patent, which are now of record in the Patent Office of the United States, and by virtue whereof your orator became and now is the sole owner of all the rights and privileges granted and secured or in-
4 tended to be granted and secured in and by the said letters patent, as by said letters patent or a duly authenticated copy thereof, here in court to be produced, will more fully appear.

And your orator further shows unto your honors that by virtue of the premises your orator became and now is the sole and exclusive owner of said letters patent and the inventions and improvements described therein, and of all the rights and privileges granted and secured or intended to be granted and secured thereby; and that since he became the owner thereof as aforesaid he has invested and expended large sums of money and been to great trouble in and about said invention and for the purpose of using said invention in applying moldings to dashes for vehicles and in making the same profitable to himself and useful to the public; and that said invention has been and is of great benefit and advantage; and that great numbers of moldings have been put upon dashes for vehicles by the use of said invention by the Peters Leather Dash Company and the Columbus Buggy Company, of the city of Columbus, Ohio, and of which firm your orator is a member, to great advantage to the public; and that the public have generally acknowledged and
5 acquiesced in the aforesaid rights of your orator, and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendant and its confederates shall be prevented.

Yet the said defendant, well knowing the premises and the rights secured to your orator aforesaid, but contriving to injure your orator and to deprive him of the benefits and advantages which might and otherwise would accrue unto him from said invention, after the issuing of the letters patent as aforesaid and before the commencement of this suit, did, as your orator is informed and believes, without the license or allowance and against the will of your orator and in violation of your orator's rights and in infringements of the aforesaid letters patent No. 178,463, unlawfully and wrongfully and in defiance of the rights of your orator, make and use the said invention in applying moldings on dashes for vehicles in great variety and quantity, and sold the said dashes and supplied the market therewith, and that it is still threatening to use and does use the same to a great extent—

All in defiance of the rights acquired by and secured to your orator as aforesaid and to his great and irreparable loss and
6 injury, and by which he has been and still is being deprived of great gains and profits which he might and otherwise would have obtained, but which have been received and enjoyed

and are being received and enjoyed by the said defendant by and through its aforesaid unlawful acts and doings.

And your orator further shows unto your honors, on information and belief, that said defendant, The Active Manufacturing Company, has sold large quantities of dashes with moldings put on by the use of said invention and has a large quantity of said work on hand, which it is offering for sale, and has by the use of said invention made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know and prays a discovery thereof; and your orator says that the use of the said invention by said defendant and its preparation for and avowed determination to continue the same and its other aforesaid unlawful acts in disregard and defiance of the rights of your orator have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

7 And your orator further shows unto your honors that he has caused notice to be given to said defendant of said infringements and of the rights of your orator in the premises and requested it to desist and refrain therefrom, but it has disregarded said notice and refused to desist from said infringements, and still continues to *to* use the said invention in fitting moldings to dashes in great quantities.

And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, upon its oath and according to its best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by it acquired and the damages suffered by your orator from the aforesaid unlawful acts.

And your orator prays that said defendant, The Active Manufacturing Company, and its servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined,

8 provisionally and perpetually, by the order and injunction of this honorable court, from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use or in anywise counterfeiting or imitating the said invention or any part thereof or any tools for attaching sheet-metal moldings as aforesaid made in accordance therewith or like or similar to those which it has heretofore made, and that the said defendant may be decreed to pay the costs of this suit, and that your orator may have such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendant, The Active Manufacturing Company,

and its servants, agents, attorneys, and workmen and each and every of them as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendant, The Active Manufacturing
9 Company, commanding it, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide such order and decree as may be made against it.

And your orator will ever pray, &c.

GEORGE M. PETERS.

WM. HUBBELL FISHER,
J. W. FIRESTONE.
Compl't's Sol'rs and of Counsel.

UNITED STATES OF AMERICA.

STATE OF OHIO, FRANKLIN CO., } ss:
Eastern Division of the Southern District of Ohio, }

On this 27th day of December, A. D. 1881, before me personally appeared George M. Peters, the above-named complainant, who, being by me first duly sworn, doth depose and say that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as those matters he believes it to be true.

GEORGE M. PETERS.

Sworn to by the said George M. Peters and by him subscribed in my presence on this the 27th day of December, A. D. 1881.

[SEAL.] W. E. GUERIN,
Notary Public.

10 And afterwards, to wit, on the 3rd day of January, A. D. 1882, came the complainant and filed in the clerk's office of the court aforesaid a certain cost bond in this cause, which said cost bond is in the words and figures following, to wit:

Cost Bond.

In the Circuit Court of the United States for the Southern District of Ohio.

GEORGE M. PETERS }
vs. } 3206.
ACTIVE MANUFACTURING CO. }

I hereby acknowledge myself security for the costs in this case.

JOS. J. LARKIN. [SEAL.]

Taken and acknowledged before me this 3rd day of Jan'y, 1882.

[SEAL.] CHAS. R. NEVIN,
Deputy Clerk U. S. Circuit Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Jos. J. Larkin, a resident of said district, do solemnly swear that after paying my just debts and liabilities I am worth two thousand dollars in real estate within the jurisdiction of this court and subject to execution, levy, and sale.

JOS. J. LARKEN.

Sworn to & subscribed before me this 3rd of Jan'ry, A. D. 1882.
[SEAL.] CHAS. R. NEVIN,
Deputy Clerk U. S. Cir. Court, S. D. O.

11 And thereupon there was issued out of the clerk's office of the court aforesaid our certain subpœna in chancery in this cause, directed to the marshal of said district and against the said defendant, which said subpœna is in the words and figures following, to wit:

Subpœna in Chancery.

UNITED STATES OF AMERICA, *Southern District of Ohio,* } *ss:*

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Active Manufacturing Company, citizen of and resident in the State of Ohio, if it be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in February next, to answer a certain bill in chancery filed and exhibited in said court against it by George M. Peters, citizen of and resident in the State of Ohio.

Hereof you are not to fail under the penalty of the law thence ensuing; and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 3rd day of January, A. D. 1882, and in the 106th year of the Independence of the United States of America.

Attest: [SEAL.] WM. C. HOWARD, *Clerk.*

12 MEMORANDUM.—The said defendant is required to enter its appearance in this suit in the clerk's office of said court on or before the first Monday of February, 1882; otherwise the said bill may be taken *pro confesso.*

WM. C. HOWARD, *Clerk.*

And afterwards, to wit, on the 5th day of January, A. D. 1882, came the marshal of said district, to whom the said writ was in form aforesaid directed, and returned the same into the clerk's office of the court aforesaid with his proceedings endorsed thereon in the words and figures following, to wit:

Marshal's Ret. on Subpœna.

Rec'd this writ at Cincinnati, O., Jan. 3rd, 1882, and served the same in Hamilton county as follows: On the within-named Active

Manufacturing Company by delivering a true copy hereof to George Monteith, as secretary and treasurer of said company, personally, Jan. 5th, 1882, at 9.10 o'clock a. m.

J. C. ULLERY, *U. S. M.*,
By C. E. TWIFORD, *Dep.*

And afterwards, to wit, on the 6th day of February, A. D. 1882, came the respondent, by its solicitors, and filed in the clerk's office of the court aforesaid a certain entry of appearance in this cause, which said entry of appearance is in the words and figures following, to wit:

13 *Entry of Appearance.*

United States Circuit Court, Southern District of Ohio. In Equity.

GEORGE M. PETERS
vs. } 3206.
ACTIVE MANUFACTURING CO.

The clerk will enter our appearance for the respondent in the above-entitled cause.

STEM & PECK.

And afterwards, to wit, on the 6th day of March, A. D. 1882, came the respondent, by its solicitors, and filed in the clerk's office of the court aforesaid a certain answer in this case, which said answer is in the words and figures following, to wit:

Answer.

United States Circuit Court, Southern District of Ohio, Western Division. In Equity.

GEORGE M. PETERS
vs. } 3206.
ACTIVE MANUFACTURING CO.

The answer of the Active Manufacturing Company, defendant, to the bill of complaint of George M. Peters, complainant.

14 This respondent, now and at all times hereafter, saving and reserving to itself all and all manner of benefit and advantage of exception that may be had or taken to the manifold errors, uncertainties, and insufficiencies in the said bill of complaint contained, for answer thereto, or to so much thereof as it is advised it is material or necessary for it to answer, answering, says:

1. It admits that letters patent of the United States for an alleged improvement in tools for attaching sheet-metal moldings were issued and delivered to George M. Peters June 6, 1886, which letters were numbered 178,463; but as to the allegation in said bill that the said alleged invention was new and useful, and that it had not been in public use and on sale for more than two years with the consent and allowance of the alleged inventor, and that the application for same was

made in due form according to law, and that by said patent for said alleged invention there was legally secured to said Peters the full and exclusive right and liberty of making, using, and vending to others to be used the said alleged invention described in said patent, this respondent denies the same.

2. And, further answering, this respondent denies, upon information and belief, that since the issuing of the said letters patent No. 178,463 the said complainant has invested and expended large sums of money and has been to great trouble or any trouble in and about said alleged invention, and that the same has been or is of great benefit and advantage, or that great numbers of moldings made according to said alleged invention have been put upon dashes by the Peters Dash Company and the Columbus Buggy Company to the great or any advantage to the public, or that the public have generally acknowledged or acquiesced in complainant's alleged and pretended rights, or that he would have made and realized large gains and profits or any gains and profits from said alleged invention but for the pretended infringement of this respondent.

3. This respondent denies having in any manner infringed upon or violated any lawful rights of the said complainant, and denies having made or sold large quantities of vehicle dashes, with moldings put on in infringement of said patent, and of having received large gains and profits therefrom, or that it has a large quantity of said moldings on hand which it is offering for sale; it denies that it is now engaged in making or selling dashes with moldings put on in infringement of said patent.

4. And, further answering, the defendant herein says that it is using a machine for putting moldings upon dash-boards, which machine was made under a license or permit from the said George M. Peters, complainant herein; that the defendant is the owner of said machine and of the right to use the same for putting moldings on dash-boards for vehicles, and that such use in nowise infringes any rights of the complainant.

5. This respondent, having fully answered the allegations in the said bill of complaint contained by way of further defense, on information and belief alleges:

a. That the alleged invention was in public use in this country with the consent and allowance of the said Peters for more than two years prior to his application for a patent therefor.

b. That the said Peters was not the first and original inventor of the thing patented, but that the same was known and in public use in this country for more than two years prior to his application therefor.

c. That the said alleged invention was abandoned to the public.

d. That prior to the alleged invention or discovery thereof by the

said Peters the alleged invention had been patented, as will more fully and at large appear, and also had been described in certain printed publications, as will hereafter and more fully appear.

6. And this respondent, further answering, says that the names and residences of those who had used the alleged invention more than two years prior to the date at which the said Peters
17 made application for a patent thereon and the lists of patents for the same invention prior to his said application, and the printed publications hereinbefore mentioned are at present unknown to this respondent, but it craves leave to add the same hereto when it shall have obtained them.

Without this, that there is any other matter, cause, or thing in the said complainant's said bill contained material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or to the belief of this respondent.

All which matters and things this respondent is ready and willing to aver, maintain, and prove, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

ACTIVE MANUFACTURING CO.
By GEO. MONTEITH, *Secr'y*

STEM & PECK,
Solicitors for Def't.

STATE OF OHIO, }
Hamilton County, } *ss:*

On this 4th day of March, 1882, personally appeared George Monteith, secretary of the Active Manufacturing Company, the within-named respondent, who, being duly sworn, says that he has read the foregoing answer and knows the contents thereof,
18 and that the same are true of his own knowledge, except as to the matters therein stated on information and belief, and as to those he believes them to be true.

GEORGE MONTEITH.

Subscribed and sworn to before me this 4th day of March, 1882.
[SEAL.] JERE. F. TWOHIG,
Notary Public, Ham. Co., Ohio.

And afterwards, to wit, on the 1st day of May, A. D. 1882, came the complainant, by his solicitors, and, by leave of court first had and obtained, filed in the clerk's office of the court aforesaid a certain replication in this cause, which said replication is in the words and figures following, to wit:

Replication.

United States Circuit Court, Southern District of Ohio, Western Division. In Equity.

GEORGE M. PETERS
vs.
THE ACTIVE MANUFACTURING CO. } No. 3206.

The replication of George M. Peters, complainant, to the answer of The Active Manufacturing Company, defendant.

This repliant, saving and reserving unto himself, now and
19 at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

Cincinnati, Ohio, Ap'l 29th, 1882.

WM. HUBBELL FISHER AND
JASON W. FIRESTONE,
Complainant's Solicitors and of Counsel.

We consent to the filing of the above replication.
May 1st, 1882.

STEM & PECK,
Sol'rs for Def'ts.

20 And afterwards, to wit, on the 30th day of May, A. D. 1882, there was filed in the clerk's office of the court aforesaid a certain stipulation, &c., *filed*, which said stipulation is in the words and figures following, to wit:

Stipulation in Regard to Notary, &c.

United States Circuit Court, Southern District of Ohio, Western Division. In Equity.

GEORGE M. PETERS
vs.
THE ACTIVE M'F'G CO. } 3206.

It is hereby stipulated and agreed by and between the parties above named as follows:

First. That any notary public named by either party may act as special examiner in taking testimony under the 67th rule in equity, as amended.

Second. That each of the above-named parties may keep possession of their exhibits in the above case until the trial thereof.

Cincinnati, Ohio, May 20th, 1882.

WM. HUBBELL FISHER AND
JASON W. FIRESTONE,
Sol'rs, &c., for Complainant.
STEM & PECK,
Sol'rs, &c., for Respondent.

21 And afterwards, to wit, on the 6th day of June, A. D. 1882, came the complainant, and filed in the clerk's office of the court aforesaid a certain deposition of M. F. Hackman and others in this cause, which said depositions are in the words and figures following, to wit:

Depositions of M. F. Hackman and Others.

Circuit Court of the United States, Southern District of Ohio, Western Division. In Equity.

GEORGE M. PETERS, Compl't,
vs. } 3206.
THE ACTIVE MANUFACTURING COMPANY, Respondent.

Examination of witnesses at request of and on behalf of the complainant above named, under the 67th rule of practice for the courts of equity of the United States, pursuant to the following stipulations, before me, H. F. Guerin, agreed acting special examiner and notary public within and for the county of Franklin, in the State of Ohio, to take the following depositions.

H. F. GUERIN,
Notary Public and Agreed Acting Special Examiner,
Franklin County, Ohio.

It is stipulated by the parties that these depositions be taken
22 before me, H. F. Guerin, by questions and answers, and that all formal notices are waived.

H. F. GUERIN,
Notary Public and Agreed Acting Special Examiner,
Franklin County, Ohio.

Present: Jason W. Firestone, counsel for complainants, and A. Stem, counsel for respondents.

H. F. GUERIN,
Notary Public and Acting Special Examiner,
Franklin County, Ohio.

M. F. HACKMAN, witness produced by complainant, being by me first duly sworn, deposes and says as follows:

Q. 1. State your name, age, residence, and occupation.

A. 1. My name is M. F. Hackmon; residence, 65½ E. Rich St., Cincinnati, Ohio; occupation, travelling salesman for the Peters' Dash Company and the Columbus Buggy Company of Columbus Ohio; my age is 36 years.

Q. 2. Where was you employed prior to your employment with the Peters Dash Company; with whom, when did you commence, and when did your employment end?

A. 2. I was employed by the Active Manufacturing Co. of Cincinnati, said employment commencing, as near as I can remember, in March of 1880. My employment with them ended January 16th, 1882.

23 Q. 3. In what kind of business was the said Active M'f'g Co. engaged?

A. 3. That of manufacturing carriage dashes and fenders, and dealers in bow-sockets & whip-sockets.

Q. 4. Who was manager of the Active M'f'g Co., or who had charge of the business?

A. 4. Mr. George Montieth was secretary and treasurer of said company; I was always taught to believe was general superintendent and manager of said Active M'f'g Co.'s business.

Q. 5. What position did you hold as an employee of the Active M'f'g Co. and what were your duties?

A. 5. I held the position of foreman of the covering department for covering said dashes and fenders made by them. My duties were to order and direct the work to the best of my knowledge.

Q. 6. Was you familiar with the kind of machinery and tools used by the Active Manuf'g Co. in the department where you was foreman?

A. 6. I was.

Q. 7. What kind of machinery and tools did the Active M'f'g Co. use in that department?

A. 7. They used sewing-machines suitable for such work;

24 a dash-stretching and framing machine; also tools for attaching sheet-metal molding.

Q. 8. While in the employ of the Active M'f'g Co. when did you first see said company use a tool or tools for applying the ornamental or sheet-metal moldings to carriage dashes?

A. 8. On the first day I was there.

Q. 9. What kind of a tool did you first see the Active M'f'g Co. use for applying the ornamental or sheet-metal moldings to carriage dashes?

A. 9. The tools so used were twofold, comprising a bench provided with a clamp for holding the dash in a rigid position; also with a windlass composed of cog-wheels operated by means of a crank, said windlass being also provided with a spindle and strap or belt having a hook at one end, fast to the spindle at the other, and operated by means of said crank and cog-wheels; also a sheath for receiving and holding the molding while being attached to the dash, so held in a rigid position.

Q. 10. Can you describe said sheath? If you can, please do so.

A. 10. This sheath was made of iron constructed with a longitudinal groove for receiving and holding the molding. It was

25 further provided with transverse slots or notches for the purpose of receiving a key, forming a stop to prevent the molding from slipping through the longitudinal groove when attaching

molding to dash. Said sheath was further provided with a hook on the top of one end, being the advance end, for the purpose of attaching it to the strap operated by the windlass already described.

(Complainant now offers in evidence the exhibit marked "Sheath for applying ornamental or sheet-metal moldings to carriage dashes No. 1.")

Q. 11. Please examine the above exhibit and state how far, if at all, it represents the tool for applying the ornamental or sheet-metal moldings used by the Active M'f'g Co.

A. 11. This exhibit is a correct model of the one I found in use by the Active M'f'g Co. when I first came in their employ, the only marked difference being that the transverse slots or notches were about twice the width of these; also the length of sheath being about twice that of this.

Q. 12. How frequently and to what extent did the Active M'f'g Co. make use of said tool for applying moldings to dashes, and for what length of time did said use continue?

26 A. 12. Said tool was in use daily to the extent of attaching molding to about $\frac{2}{3}$ of all dashes manufactured, and continued to be used until a short time after the filing of infringement suits, in January, 1881, by George M. Peters *vs.* The Active Manuf'g Co.

Q. 13. What kind of a tool, if any, did the Active M'f'g Co. use for putting moldings on dashes after they quit using the one described by you, substantially like "Exhibit No. 1.?"

A. 13. One very much similar to it, with the exception that the main body composing sheath was made of wood, having a longitudinal groove lined with brass tubing, the edge of which was connected with sheet-brass trimming running over edge of wood and secured to the side of sheath by means of tacks. Said sheath was also provided with a stop by means of having holes drilled through sheath transversely and a pin forming the stop.

Complainant now offers in evidence exhibit marked "Sheath for applying ornamental or metal moldings to carriage dashes No. 2."

Q. 14. Please examine above exhibit and state how far, if at all, it correctly represents the tool last referred to by you as used by the Active Manufacturing Company.

27 A. 14. It substantially represents said tool so used, with the exception of length, the one used by the Active M'f'g Co. being about twice the length of this model.

Q. 15. How frequently and to what extent did the Active M'f'g Co. make use of said last-described tool for applying molding to dashes, and for what length of time did said use continue?

A. 15. They made use of it daily to the entent of attaching, perhaps, one-half of all the moldings attached to dashes for a period of time not exceeding three or four months.

Q. 16. What kind of a tool, if any, did the Active M'f'g Co. use for putting moldings on dashes other than the one last described

and marked "Exhibit No. 2" during the said period of 3 or 4 months?

A. 16. The one I found there when first entering their employ and which I have already described.

Q. 17. How frequently and to what extent did the Active M'f'g Co. during said period of 3 or 4 months make use of said tool substantially like "Exhibit No. 1" that you found when you went there, and during what length of time did the use of said last-named tool continue?

28 A. 17. They made use of it daily or to the extent of attaching about ½ of all the moldings then being attached to dashes. The use of said tool continued after this period of 3 or 4 months for attaching all the moldings then being attached to dashes till the time of my going out of their employ, on January 16th, 1882.

Q. 18. What became of the said tool above described substantially like "Exhibit No. 2?"

A. 18. I presume that said tool remained in the factory, but the use of it was whol-y abandoned, except during the 3 or 4 months above mentioned.

Q. 19. Have you the means of knowing what became of the dashes made by the Active M'f'g Co. that had moldings put on them by use of the tools you have described? If so, state what became of them.

A. 19. I have; they were sold to public dealers and consumers of dashes.

Q. 20. Have you the means of knowing the number of dashes made & sold by the Active M'f'g Co. that had moldings put upon them by means of the tools you have described during your employment? If so, please give the number.

29 A. 20. I have the means of knowing only so far as the weekly production is fresh in my memory, and by careful calculation over the weekly reports which I made and handed to the Active M'f'g Co. of dashes manufactured I make an estimate of 35,000 or 40,000 being made with moldings on them attached by means of tools described during the time of my employ.

Q. 21. State, if you know, where and why the Active M'f'g Co. got the said tool described by you substantially like "Exhibit No. 2."

A. 21. Mr. Monteith brought it into the factory one day and told me that he had obtained it from Emerson, Fisher & Co., and that it was a tool made under license of George M. Peters or made by permission of George M. Peters, and wished it used exclusively for attaching moldings to dashes, as it was the means of avoiding using a so-claimed infringement tool.

Q. 22. Was this tool as described by you substantially like "Exhibit No. 2," which was in use part of the time during 3 or 4 months, ever changed or altered?

A. 22. It was; the metal-ic tube forming the longitudinal groove was frequently found to be too small for receiving larger or wider moldings than those commonly used. This change was

30 effected by taking out said tube and fitting into the groove a larger tube.

Q. 23. Have you the means of knowing who compose the partnership of the Peters Dash Co. and the Columbus Buggy Co. of Columbus, O.?

A. 23. I have—only as far as is represented on their business forms presented to the public—and — are George M. Peters, C. D. Firestone, and O. G. Peters.

M. F. HACKMAN.

Cross-examination by A. STEM, attorney for respondent:

X Q. 24. Why did you leave the employ of the Active M'f'g Company?

A. 24. I was told by Mr. Monteith that owing to the fight with Peters Dash Co. it was necessary for him to economize as much as possible, and that Mr. Gates, being there now and being interested, would be their traveling man; consequently it became necessary for him to dispense with my services as traveling man for the establishment.

X Q. 25. You stated, in your direct examination, that you held the position of foreman of the covering department, and that your duties were to order and direct the work in that department.

31 Did he find it necessary to dispense with your services in that capacity also?

A. 25. I presume so, from the fact that previous to my starting on the road as a traveling salesman I sufficiently educated another man who was then considered competent to take charge of my department, with such assistance as I might from time to time render when about the premises, and who Mr. Monteith claimed was working for much less money than myself, and — was, therefore, a matter of economy to retain him in my stead when this final disposal was made of me.

X Q. 26. Were you not discharged on account of drunken-ess and inattention to business?

A. 26. I was never so informed, but, upon the contrary, I was told by Mr. Monteith that I had performed my duties faithfully and performed them well.

X Q. 27. Did the machine for applying molding to dashes used by the Active M'f'g Co. when you went into their employ have the slots and key like "Exhibit No. 1?"

A. 27. It did, with the exception that they were wider.

X Q. 28. You are positive about that, are you?

A. 28. I am, so far as general appearance is concerned; as to distance between slots and notches there might be some variation from the one described.

32 X Q. 29. You are positive, are you, that it had slots like this in "Exhibit 1" and a wedge-shaped key to be inserted in the slots?

A. 29. I am, with the exception previously stated, that they were wider.

X Q. 30. Are you as sure about that as you are that they used a tool like "Exhibit No. 1" at all?

A. 30. I am.

X Q. 31. Would you be willing to swear that if there were no slots in it and key like that shown in "Exhibit No. 1" that there was no such tool at all?

A. 31. No, sir.

X Q. 32. Then you are not so positive about that as you thought you were, are you?

A. 32. I understand by your question that you want for me to know or think that no such tool at all could be used without having such slots or key.

X Q. 33. I did not mean that, but asked you whether you were just as sure that the tool used by the Active M'f'g Co. like "Exhibit No. 1" had the slots and key, as you are sure that they ever used such a tool at all—*i. e.*, if you were wrong about its having any slots like these you were equally wrong in saying that they
33 used such a tool for applying the moldings to the dashes.

A. 33. I was not wrong in saying that the tool they used for applying moldings had slots or keys similar to these, nor was I wrong in saying that they used such a key at all.

X Q. 34. Did you ever have occasion to use this tool yourself?

A. 34. Yes, sir.

X Q. 35. How much and how often?

A. 35. Principally to show others how to use it.

X Q. 36. You never ran that machinery—that part of the work—regularly?

A. 36. I directed it run.

X Q. 37. That is not the question. Did you ever run it yourself?

A. 37. I did; but, as I have stated before, principally to show others how to use it.

X Q. 38. How came Mr. Monteith to tell you where he got the sheath like "Exhibit No. 2?"

A. 38. I do not know.

X Q. 39. Where was it?

A. 39. At the time he brought said tool into the factory.

34 X Q. 40. The question is, "When did he tell you?" That means, When did he bring it into the factory? You have already said he brought it into the factory.

A. 40. As near as I can remember, he brought it into the factory about a month after those infringement suits were filed against the Active M'f'g Company by George M. Peters.

X Q. 41. Are you familiar with the patent on which this suit is brought?

A. 42. I am somewhat familiar with it.

X Q. 43. Do you understand the claims of this patent?

(Question objected to by complainant's counsel on the ground that the same is not proper cross-examination, incompetent, and irrelevant, and tending to qualify the witness as an expert.)

A. 43. I think I do.

X Q. 44. In your opinion is "Exhibit No. 2" an infringement on said patent; if so, what claim?

(Objected to by attorney for complainant on the grounds that the question is incompetent and irrelevant.)

A. 44. In my opinion it is an infringement, because the pin passing across the sheath through the tube forms a "suitable stop" to prevent the molding from slipping through the tube when attaching moldings to dashes.

35 Redirect examination:

R. D. Q. 45. Where were the infringement suits pending or filed that you have spoken of in your examination?

R. D. A. 45. I understand that they were filed in Cincinnati.

R. D. Q. 46. What Monteith do you refer to in your former answers? Give his full name. What position did he hold, if any, in the Active M'f'g Co.?

R. D. A. 46. George Monteith; held the position as secr'y and treasurer of said Active M'f'g Co.

And further this deponent sayeth not.

M. F. HACKMAN.

JAMES H. C. SNELLEN, witness produced by complainant, being by me first duly sworn, deposes and says as follows (notary):

Q. 1. State your name, age, residence, and occupation.

A. 1. My name is H. C. Snellen; age, 23 years; residence, Columbus, O.; occupation, marker in the dash department of the Peters Dash Co.

Q. 2. Where was you employed prior to your employment with the Peters Dash Co., with whom, when did your employment commence, and when end?

A. 2. Was employed by the Active M'f'g Co. of Cincinnati, O.; commenced working for them May 14th, 1881, and quit there on May 19th, 1882.

36 Q. 3. Was you familiar with the kind of tool or tools used by the Active M'f'g Co. for applying the ornamental or sheet-metal moldings on the top of carriage dashes?

A. 3. I was.

Q. 4. Please examine exhibit marked "Sheath for applying ornamental or sheet-metal moldings to carriage dashes No. 1" and state how far, if at all, said exhibit represents a tool used by the Active M'f'g Co. for applying sheet-metal molding to carriage dashes.

(Objected to by att'y for respondents as leading.)

Witness here examines "Exhibit No. 1."

A. 4. This one is very nearly like the one they used, except that theirs was longer and the slots were wider and the wedge was also wider to fit the slots.

Q. 5. How frequently and to what extent did the Active M'f'g Co. make use of the said tool for applying moldings to dashes, and for what length of time did such use continue?

A. 5. It was used from about the time Mr. Hackman left until about two or three weeks ago; it was used continually. I don't

know that I can tell how many dashes were made or moldings put on by means of this sheath.

Q. 6. What proportion of the dashes made by the Active
37 M'f'g Co. had moldings put on by use of said tool?

A. 6. Well, now, I think it would seem about ¾ of them.

(Complainant now offers in evidence exhibit marked "Sheath for applying ornamental moldings to dashes No. 3.")

Q. 7. Please examine above exhibit and state how far, if at all, it represents a tool as used by the Active M'f'g Co. for applying metal moldings to carriage dashes.

(Objected to by att'y for respondents as leading.)
(Witness here examines said exhibit.—Notary.)

A. 7. Well, that there is an exact representation of the one they had in use at the time I left, with the exception of this hook. I couldn't give an illustration of the exact attachment of it. I believe that, so far as I can see, *that* this is an exact representation of it, except the hook, and as to that I could not state as to its attachment.

Q. 8. Of what material was said tool made?

A. 8. I think it was cast iron.

Q. 9. When did the use of this last-named tool by the Active M'f'g Co. commence?

A. 9. They commenced using it about 2 or 3 weeks ago.

38 Q. 10. How frequently and to what extent did the Active M'f'g Co. use said tool for applying metal moldings to dashes?

A. 10. They used it continually; they run about ¾ of all made.

Q. 11. Have you the means of knowing the number of dashes made by the Active M'f'g Co. during your employment by it? If so, please give number.

A. 11. I couldn't tell exactly, but think they would average last year about 500 per week.

Cross-examination by A. STEM, att'y for respondent:

X Q. 1. Why did you leave the employ of the Active M'f'g Co.?

A. 1. Well, I left the employ of the Active M'f'g Co. because I could do better, and not only that, but I did not like the way it was foremanized.

X Q. 2. What do you mean by "foremanized?"

A. 2. Well, I mean the way the orders were issued; the way the orders were carried out.

X Q. 3. Who issued the orders?

A. 3. Well, the orders are first issued by Mr. Monteith and then scattered out most anywhere.

X Q. 4. Who carried out the orders?

A. 4. Mr. Bogart.

39 X Q. 5. Didn't you carry out the orders that were issued to you?

A. 5. I did.

X Q. 6. Why, then, didn't you like the way the- were carried out?

A. 6. Well, they were sent to me by Mr. Bogart, through the boys or hands, rather, and sometimes blanks were filled for that purpose.

X Q. 7. Did you want Mr. Bogart or Mr. Monteith to bring the orders to you personally?

A. 7. I wanted Mr. Bogart.

X Q. 8. Was that the only ground for your dissatisfaction with the Active M'f'g Co.?

A. 8. Well, there was other grounds that I think not necessary for mentioning.

X Q. 9. I would like to know what those other grounds were.

A. 9. I don't like to undertake to tell that, because it is concerning the foreman alone & don't want to say anything about that unless it has to be done.

X Q. 10. Were you not discharged by the Active M'f'g Co.?

A. 10. I was not.

40 X Q. 11. You can swear positively, can you, that the Active M'f'g Co. used a sheath for putting the metal moldings on dashes in all respects like "Exhibit No. 1?"

A. 11. Yes, sir; all except this; couldn't say how it was fastened.

(Witness refers to the hook.—Notary.)

X Q. 12. It had slots for a wedge or key, like "Exhibit No. 1," had it?

A. 12. It had.

X Q. 13. You can swear positively to that, can you?

A. 13. I can.

X Q. 14. You are as sure about that as that they used a sheath at all, are you?

A. 14. I am.

X Q. 15. There can be no mistake about that, can there?

A. 15. No; there cannot.

X. Q. 16. You say that the sheath, like "Exhibit No. 1," was used by the Active M'f'g Co. for applying moldings to dashes until about the time Mr. Hackman left. What did they use before he left?

A. 16. Before he left they used the same kind of a machine or sheath.

41 X Q. 17. Can you give the exact time when the Active M'f'g Co. began using a sheath like Exhibit No. 32?

A. 17. I cannot; not the exact time.

X Q. 18. Do you know why they began using it?

A. 18. I do not.

And further this deponent sayeth not (notary).

JAMES H. C. SNELLEN.

Further taking of these depositions here postponed until Saturday morning at 9.30 o'clock.

H. F. GUERIN,
Notary Public.

SATURDAY—9.30 a. m.

Further taking of these depositions here resumed in accordance with previous adjournment.

H. F. GUERIN,
Notary Public.

Present: J. W. Firestone, counsel for complainant, and A. Stem, counsel for respondent.

C. D. FIRESTONE, witness produced by complainant, being first duly sworn, deposes and says as follows:

Q. 1. State your name, age, residence, and occupation.

A. 1. My name is Clinton D. Firestone; my age is 33 years; residence, Columbus, Ohio; occupation, manufacturer, and am a member of the firm of The Peters Dash Co. and Columbus Buggy Co.

Q. 2. During the year 1880 did you visit the factory of the
42 Active M'f'g Co. of Cincinnati; and, if so, at what time in the year?

A. 2. I did; it was about May 27th.

Q. 3. While visiting the factory of the Active M'f'g Co. at that time did you have an opportunity of seeing any of the tools or machinery used by the said Active M'f'g Co.? And, if so, please describe the same.

A. 3. I did. I saw a number of their machines; but I suppose the one you would like to know the most about is a sheath for drawing on moldings on dashes. This sheath that they were using for drawing moldings on dashes was made of iron, about $\frac{3}{4}$ or $\frac{5}{8}$ of an inch square, with a groove put in it from end to end for inserting the molding before being drawn on the dash. There were several stops cut across the groove for inserting a piece of iron, which served as a stop, for the different-length moldings which are used in the different lengths of dashes. It also had a hook on one end on the side op-osite from the groove, for the purpose of attaching a strap or belt for drawing the molding on the dash.

Q. 4. Please examine "Exhibit No. 1" and state how far, if at all, it represents the tool for applying moldings to dashes you saw used by the Active M'f'g Co.

43 (Witness here examines exhibit & deposes as follows:)

A. 4. I would consider it a very good representation of the tool I saw in use by the Active M'f'g Co.

Q. 5. Did you at any time have a conversation or conversations with any of the officers or managers of the Active M'f'g Co. relative to the use by said Active M'f'g Co. of the tool aforesaid; if so, with with whom, when & where, and who was present, and what was said?

A. 5. I did with George Monteith, sec'y & manager of the Active M'f'g Co., at the office and factory of the Active M'f'g Co., and also at the Gibson House, in Cin., O. Mr. O. G. Peters was present during those conversations. Mr. Burross, of the Robinson Wagon Co., informed us that he had possession or control of the stock of the

Active M'f'g Co. and wanted to dispose of it to us, and invited us to go to Cin'ti to look over the effects, tools, &c., of the Active M'f'g Co., which we done, and in our conversation with Mr. Monteith in regard to the tools and fixtures they were using I told him that they were using a tool (a sheath for drawing on moldings) that was patented by Geo. M. Peters; that we had learned that they were using such a tool and Mr. Peters had instructed me to say to him that if the tool they were using infringed his patent that he would
44 hold them responsible for damages. I don't know, but think that will answer the question. I might say a little further there: Mr. Monteith stated that he did not fear a suit for damages because their tool was made different from that patented by Geo. M. Peters. The tool he (Geo. M. Peters) patented was made in sections.

And further this deponent sayeth not.
No cross-examination.—Notary.

C. D. FIRESTONE.

OSCAR G. PETERS, witness produced by complainants, being first duly sworn, deposes and says as follows:

Q. 1. State your name, age, residence, and occupation.

A. 1. My name is Oscar G. Peters; age, 40 years; residence, Columbus, O., and by occupation am a manufacturer and member of the firm of the Peters Dash Co. and Columbus Buggy Co.

Q. 2. Did you during the year 1880 visit the factory of the Active M'f'g Co.; and, if so, who accompanied you and at what time was it in said year?

A. 2. I did; with Mr. Firestone on the 27th day of May, 1880.

Q. 3. While visiting said factory of the said Active M'f'g Co. did you you have an op-ortunity of seeing any of the
45 tools or machinery used by said Co. in their factory?

A. 3. I did.

Q. 4. Describe as nearly as you can the kind or kinds of tool or tools you saw used there.

A. 4. I saw sewing-machines, and one machine in particular that they were using at the time we were there. The machine I refer to was one to pull moldings on dashes or put them on dashes. This machine or tool was an iron one with a groove in it large enough to hold the molding and having an arrangement by which it could be pulled on the dash readily.

Q. 5. Please examine exhibit marked "Exhibit No. 1, &c." and state how far, if at all, it represents the tools for applying moldings to dashes you saw used by the Active M'f'g Co. at that time. (Witness here examines "Exhibit No. 1.")

A. 5. It is substantially the same as the one I saw used there.

Q. 6. Did you at that time hear a conversation or conversations between Mr. C. D. Firestone and any of the officers or managers of the Active M'f'g Co. relative to the use of the tool you have referred to by the Active M'f'g Co.; if so, with whom and what, in substance, was said?

46 (Question objected to as incompetent by counsel for respondent.)

A. 6. I heard a conversation between Mr. Firestone and George Montieth, s'c'y of the Active M'f'g Co., the same day at the Gibson House, in which Mr. F. said that Mr. Geo. Peters would hold him responsible for infringing his patent dash-molding machine. I guess that's all.

Cross-examination by Mr. STEM:

X Q. 1. Did the machine you saw in use by the Active M'f'g Co. have slots and a key similar to those shown in Exhibit No. 1?

A. I cannot remember positively about that.

(And further this deponent sayeth not.—Notary.)

OSCAR G. PETERS.

E. H. MOONEY, witness produced by complainants, being by me first duly sworn, deposes and says as follows:

Q. 1. State your name, age, residence, and occupation.

A. 1. My name is Edwin H. Mooney; age, 24 years; residence, Columbus, O., ond by occupation am a dash-maker & foreman in the dash department of the Peters Dash Company.

Q. 2. How long have you been in the employ of the Peters Dash Co., in their dash department?

47 A. 2. About 4½ years, and have been in the dash department the same length of time.

Q. 3. Have you the means of knowing the kind of tools and machinery used by the Peters Dash Co. in the manufacture of dashes in your department? If so, name them.

A. 3. I have. They use sewing-machines, frame inserter, clamp, molding sheaths, and bending machines; that's about all I can think of now.

Q. 4. What king of a molding sheath do they use and have they been using?

(Objected to by Mr. Stem as irrelevant and immaterial.)

A. 4. They use one similar to the one described in the patent, being a metal sheath with a longitudinal groove for receiving the molding, with a stop or stay, rather.

Q. 5. What patent do you refer to?

(Same objection as above.)

A. 5. The patent of Mr. Geo. M. Peters.

Q. 6. How frequently and to what extent have the Peters Dash Co. made use of the said tool for applying metal moldings to dashes?

(Same objection as above.)

A. 6. They have used it continuously and on nearly all dashes made since I have been in their employ.

48 Q. 7. Have you the means of knowing how the dashes are disposed of by the Peters Dash Co. that have had moldings

placed upon them by use of the tool referred to by you? If so, please state.

(Same objection as above.)

A. 7. I have. They are sold by the Peters Dash Co. to the trade all over the U. S. and Canada, and are sold by the Columbus Buggy Co. on their buggies.

Q. 8. Have you the means of knowing the number of dashes made and sold by the Peters Dash Co. that have had moldings placed upon them by use of the tool aforesaid as patented to Geo. M. Peters? If so, please state the number.

(Same objection as above.)

A. 8. I have; about 500,000.

Q. 9. Do you know the number of the letters patent granted to Geo. M. Peters and referred to by you in your former answers? And, if so, please give said number.

(Same objection as above.)

A. 9. I believe it is No. 178,463.

Q. 10. Do you know who compose the partnership of the firm of the Peters Dash Co. of Columbus, O.? If so, please give their names.

49 (Same objection as above.)

A. 10. I do; Mr. George M. Peters, C. D. Firestone, and O. G. Peters.

(The deposition of Edwin H. Mooney is objected to as incompetent, the same being immaterial and irrelevant to any issues in the case, and cross-examination is declined by Mr. Stem.)

And further this deponent sayeth not.

EDWIN H. MOONEY.

STATE OF OHIO, }
Franklin County, } *ss:*

I, H. F. Guerin, a notary public in and for the county of Franklin, State of Ohio, and agreed acting special examiner for the circuit court of the United States to take the depositions of M. F. Hackman, James H. C. Snellen, C. D. Firestone, O. G. Peters, and E. H. Mooney, witnesses produced on behalf of and at the request of complainant, do hereby certify that on the several days named in the depositions hereto annexed I was attended at the office of the Columbus Buggy Company by the counsel and witnesses aforesaid; that each of said witnesses, previous to the commencement of their respective deposition was cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, and the said witnesses were
50 then separately and apart from each other examined, and the said examinations were continued, as above set forth, and taken at the time and place agreed upon by counsel, and the depositions of said witnesses were reduced to writing in their presence, respectively, and respectively by them subscribed in my presence,

and that complainant's exhibits, viz., "Exhibit, &c., No. 1," Exhibit, &c., No. 2," and "Exhibit, &c., No. 3," were introduced in evidence in said depositions. I further certify that I am not counsel for nor attorney for nor related to either of said parties to this cause, nor in any way interested in the result, and that the fees for taking these depositions, amounting to $16.00, *has* been paid by complainant, and that the amount of $4.50 was paid to witnesses as fees by said complainant.

In witness whereof I have hereunto set my hand and notarial seal this 3rd day of June, A. D. 1882.

[SEAL.] H. E. GUERIN,
Notary Public in and for the County of Franklin, State of Ohio, and Special Examiner.

51 And afterwards, to wit, on the 7th day of August, A. D. 1882, came the respondent and filed in the clerk's office of the court aforesaid the depositions of Joseph P. Noyes and others in this cause, which said depositions are in the words and figures following, to wit:

Depositions of Joseph P. Noyes et al.

United States Circuit Court, Southern District of Ohio. In Equity.

GEORGE M. PETERS
vs. } 3206.
THE ACTIVE M'F'G CO.

Depositions taken on behalf of the defendants, under the 67th rule, in equity, as amended, pursuant to the annexed notice, before Charles N. Loomis, a notary public in and for the county of Broome, in the State of New York, and by consent of parties acting special examiner.

Present: J. W. Firestone, solicitor for compl'ts, and Arthur Stem, sol'r for def'ts.

JOSEPH P. NOYES, a witness produced on behalf of defendants, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes and says in answer to interrog-
52 atories propounded by ARTHUR STEM, Esq., sol'r for def'ts:

Q. 1. State your name, age, residence, and occupation.

Ans. My name is Joseph P. Noyes; my age is forty-four years; my residence is in the city of Binghampton, Broome county, New York; my occupation is the manufacture of combs.

Q. 2. How long have you been engaged in the manufacture of combs?

Ans. I have been so engaged for more than twenty-two years.

Q. 3. Do you manufacture any combs with metal-ic moldings for stiffening the backs; and, if yea, for how long have you manufactured?

Ans. I do, and have done so since the year 1864.

Q. 4. Is the comb which I now show you one of your manufacture?

Ans. It is.

(Counsel for defendants here offers comb shown witness in evidence, and the same is marked Defendants' "Exhibit A.")

Q. 5. Is the metallic molding now shown you a sample of the moldings used on your combs?

Ans. It is.

53 (Counsel for defendants here offers the molding shown witness in evidence, and the same is marked Defendants' "Exhibit B.")

Q. 6. State whether or not you have ever used any machinery for putting these moldings on combs.

Ans. I have.

Q. 7. Can you describe any of the machines used by you for putting moldings on combs?

Ans. Yes. I have one machine in which the molding is held in a groove, which fits it closely, and the same groove has an extension enough, smaller, to fit the comb closely, and in this extention their slides a follower, which is fitted to abut against the end of the comb. At the extreme opposite end of the larger part of the groove there is a slot across the groove containing a key or stop to prevent the molding sliding through the groove. The follower before mentioned is attached to a suitable slide and lever so that when a molding is laid in the larger part of the groove and the comb in the smaller part the comb, being prevented from bending by the walls of the groove, can be forced tightly into the molding by the action of the follower and its connected parts, the molding being, at the same time, prevented from bending by the walls of the larger part
54 of the groove.

Q. 8. Can you produce a drawing illustrating the machine above described and its operation?

Ans. I here produce a drawing which illustrates said machine. In this drawing, figure 1, A represents the main body of the machine. In the part A is the groove C and its smaller extension, D, in which are placed the molding and the comb, as described in my previous answer. O represents the slot in which is placed the key, marked figure 2. E, figure 1, represents the follower B, the slide of which the follower forms a part; L, K, M, and H the lever and connecting parts by which E and B is operated. Figure 3 shows an end view of the slide and follower.

Q. 9. Into which of the grooves do you place the metallic molding?

Ans. Into the groove C.

Q. 10. And into which the comb?

Ans. Into the groove D.

Q. 11. In use the key or stop, figure 2, is placed in the slot
55 O to prevent the metallic molding sliding, is it not?

(Objected to by counsel for complainant as leading and incompetent.)

Ans. It is.

Q. 12. State whether the groove C in the sheath A effectually prevents the metallic molding from bending as it is forced over the back of the comb.

(Same objection.)

Ans. It does.

Q. 13. State how long you have used the above-described machine for putting metallic moldings on combs in the manner described?

Ans. Since September, 1867.

Q. 14. Can you fix the date by any positive evidence besides your memory?

Ans. I can; I have referred to the time book of the men who made the machines, and find the machine to have been finished at the date named, and remember that it was put into immediate use.

Q. 15. Has it been used ever since?

Ans. It has been in continued use ever since without any alteration.

56 Q. 16. Have you ever made any effort to keep its use a secret, or has it always been open to the inspection of any person who might come into your shop?

Ans. I have made no effort to keep it secret, but the shop has always been open to visitors, and any one could see the machine who cared to look at it.

Q. 17. State whether or not you know anything of any one coming to look at it in connection with or with a view to putting moldings on vehicle dashes.

(Objected to by complainant's counsel as incompetent, irrelevant, and immaterial.)

Ans. I will give you a lengthy answer. One Everett, since dead, and E. B. Smith, of this city, were concerned several years ago in an attempt to put metallic moldings on carriage dashes similar in form to those on my combs, and at that time frequently consulted me and were in and about the factory, but I can't recollect distinctly whether they looked at that machine or not, but think it most probable they did.

Q. 18. Do you know whether they took out a patent for dashes with metallic moldings?

(Same objection.)

57 Ans. I understood they did, but can't speak from personal knowledge.

Q. 19. When was it they consulted you on this subject?

(Same objection.)

Ans. I don't recollect distinctly, but should think it was between ten and twelve years ago; possibly longer.

(Counsel for defendants here offers the drawing above referred to in evidence, and marked Defendants' "Exhibit C.")

Witness J. P. Noyes.

Cross-examination by J. W. FIRESTONE, Esq., solicitor for complainants:

X Q. 20. How long have you resided in Binghampton?

Ans. Since March, 1865.

X Q. 21. Have you ever had letters patent of the United States issued to you; if so, for what invention or inventions?

Ans. I have. I have had several patents issued; two or three for improvements in combs and two or three in connection with other machinery, one of which was for an improved drop hammer; one on an improved sewing-machine. I had two joint patents with other inventors, one on shoe machinery and one on dental instru-
58 ment. My last patent was on an improved box for packing combs.

X Q. 22. During what period of time do these inventions cover?

Ans. They cover the period between 1866 and 1880. I think I took out my first patent in the first-named year.

X Q. 22½. Then, if I understand you correctly, you have been taking out patents for your inventions ever since 1866; is this correct?

Ans. I have taken out patents for only a few inventions. I have generally considered it better policy to use my inventions in my business without taking out patents.

X Q. 23. Then am I to understand that you mean to say you think it better policy to abandon your inventions than to secure them to yourself by a patent?

Ans. That depends on the nature of the individual invention and its relation to my other business.

X Q. 24. What elements would an invention have to contain in order to induce you to take out a patent?

(Objected to as irrelevant and not in cross-examination.)

59 Ans. I should patent an invention when it was a thing intended for general use, but matters intended primarily for use in my own business I do not usually think best to patent. It is difficult to state a general rule.

X Q. 25. Is it not also difficult to tell whether or not an invention will be in general use?

Ans. I have stated that it is difficult to lay down a general rule. I have to consider the question in each case according to such light as I have at the time.

X Q. 25½. Have you ever made application for letters patent for the device you have described as shown in Exhibit C or filed a caveat?

Ans. No, sir.

X Q. 26. At whose direction was said device made?

Ans. At my own; in fact, I did the most of it with my own hands.

X Q. 27. Have you ever used said machine for putting moldings on anything else except combs?

Ans. No, sir.

X Q. 28. Have you ever applied moldings to combs different in any respect from that shown in "Exhibit B?"

60 Ans. Different only in size; not in form materially.

X Q. 29. How do they differ in size?

Ans. Mostly smaller.

X Q. 30. Smaller in length or width?

Ans. Both respects.

X Q. 31. Then you never applied moldings longer than that shown in "Exhibit B?"

Ans. No, sir.

X Q. 32. In your machine what is to prevent the molding from bending upward?

Ans. Slight pressure of the hand applied to the comb has been all that was needed in our work.

X Q. 33. Then, as I understand you, there is nothing in the machine itself that would prevent the molding, when applied by the use of your machine, from bending upward?

Ans. No.

X Q. 34. Then, if I understand you correctly, the molding is not prevented from bending by the walls of the groove of your machine?

Ans. It can bend in no direction except upwardly.

61 X Q. 35. Is it not a fact that owing to the short length of the molding as used by you in applying moldings to combs the molding does not bend upward?

Ans. It is.

X Q. 36. Who made the machine you have described as made in 1867?

Ans. Wm. Knopp and his son were in my employ as machinists at that time and worked some on it.

X Q. 37. Have you any other means of knowing that they worked on this machine except your memory?

Ans. I have consulted the time book kept at that time and find it so recorded. The machine was so built during the first week in Sept., 1867.

X Q. 38. By what name did you designate this machine when made?

Ans. It was called a comb driver in the time back to which I refer.

JOSEPH P. NOYES.

62 FREDERICK YINGLING, a witness produced on behalf of defendants, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes and says in answer to questions propounded by ARTHUR STEM, Esq., solicitor for defendants:

Q 1. State your name, age, residence, and occupation.

Ans. My name is Frederick Yingling; my age is 38 years; my residence is the city of Binghampton; my occupation is comb making.

Q. 2. With whom are you employed?
Ans. J. P. Noyes & Co.
Q. 3. State whether or not you have ever used a machine for putting the metallic moldings on combs.
Ans. Yes, sir.
Q. 4. State whether the drawing now shown you, marked "Defendant's Exhibit C," represents the machine used by you for that purpose.
Ans. Yes, sir.
Q. 5. How long have you used that machine?
Ans. Since 1868; about 14 years.

Cross-examination by J. W. FIRESTONE, solicitor for complainants:

63 X Q. 6. When did you enter the employ of Noyes & Co.?
Ans. In 1860; I think it was in June, 1860, or thereabouts.
X Q. 7. Have you anything to aid you, other than your memory, to assist you in fixing the date when you commenced using this machine?
Ans. Nothing more than my memory; it was about the time we made the change from the upper floor to the lower.
X Q. 8. Might that not have been in 1869 or 1870 or 1867?
Ans. No, sir.
X Q. 9. Why?
Ans. Because I remember distinctly that we commenced using that machine on combs the year we moved down to the lower floor.
X Q. 10. Can you remember any event that occurred in the year 1870 in your manufacture of combs, or a change in the kind of machinery used?
Ans. I can't remember any change in the kind of machinery used; I remember that we moved from the mills on the Susquehanna to our present location.
X Q. 11. At what are you employed?
64 Ans. At every sort of work in the shop.
X Q. 12. In your using this machine what length of molding do you apply to combs?
Ans. Three inches and $\frac{3}{8}$; on this machine that is the only size used.
X Q. 13. How do you apply the longer moldings, if any are used, on combs?
Ans. They are pressed on by a machine.
X Q. 14. What is the length of the combs last referred to?
Ans. From five to eight inches.
X Q. 15. State, if you know, what the combs are called in the trade, that you first referred to.
Ans. The three-&-$\frac{3}{8}$-inch combs are called "pocket combs."
X Q. 16. What are the combs called in market where to moldings are pressed on as you have stated?
Ans. Metallic dressing combs.

X Q. 17. Describe in detail the comb on which you say you have placed metallic moldings by the use of a certain machine.

Ans. The comb is 3 & ⅜ inches long on the back and is hinged at one end to fold into a handle.

65 X Q. 18. Then, as I understand you, this is the only comb to which you apply moldings by the use of this machine?

Ans. Yes.

Redirect examination by ARTHUR STEM, Esq., solicitor for defendants:

Q. 19. Where was Mr. J. P. Noyes in business, and with whom, when you first engaged in business with him in 1860?

Ans. In Newark, New Jersey, with his brother, E. M. Noyes.

Q. 20. When did he come here and go into business for himself?

Ans. They came to Binghampton in 1865, in March. Mr. J. P. Noyes come up here before that and bought the mill property, as I understood.

Redirect examination by J. W. FIRESTONE:

X Q. 21. Will you please produce one of the pocket combs you have referred to in your deposition?

Ans. I will.

Witness produces pocket comb, which I mark Complainant's "Exhibit D."

FREDRICK YINGLING.

66 This examination was taken and reduced to writing and by the witnesses, Joseph P. Noyes and Frederick Yingling, subscribed and sworn to this fourth day of August, eighteen hundred and eighty-two, before me—

CHARLES W. LOOMIS,
Notary Public in and for the County of Broome, in the State of New York, and Acting Special Examiner by Consent of Parties.

Circuit Court of the United States for the Southern District of Ohio.
In Equity.

GEORGE M. PETERS
vs.
THE ACTIVE MANUFACTURING COMPANY. } 3206.

The complainant will take notice that the defendant will examine witnesses in the above-named cause under the 67th rule in equity, as amended, before competent authority, at the office of Joseph P. Noyes, at Binghampton, in the State of New York, on Friday, the fourth day of August, 1882, beginning said examination at 9 o'clock a. m. of said day and continuing from day to day until completed.

STEM & PECK,
Sol'rs for Def'ts.

Rec'd copy July 31st, 1882.

WM. HUBBELL FISHER,
Solr's for Compl'ts.

67 And afterwards, to wit, on the 7th day of October, A. D. 1882, came the defendant, by its solicitors, and filed in the clerk's office of the court aforesaid a certain amended answer in this cause, which said amended answer is in the words and figures following, to wit:

Amended Answer.

United States Circuit Court, Southern District of Ohio. Equity.

GEORGE M. PETERS. }
vs. } 3206.
ACTIVE M'F'T'G CO. }

And now comes the defendant in the above cause and, leave being had, files this amendment to its answer to the bill of complaint herein:

This respondent, now and at all times hereafter, saving and reserving unto itself all and all manner of benefit and advantage of exception that may be had or taken to the manifold errors, uncertainties, and insufficiencies of the said bill of complaint, for answer thereto, or unto so much thereof as it is advised it is material or necessary for it to make answer unto, answering, says—

That said alleged invention was in public use in this county
68 for more than two years prior to the said application of George M. Peters for letters patent.

That the said George M. Peters was not the original or first inventor or discoverer of the things patented in said letters patent, but that prior to his alleged discovery or invention the same were known to and used by the following-named persons at the places named:

At Cincinnati, Ohio, by Lowe Emerson, Hiram W. Ransom, George W. Fisher, J. W. Fisher, who now resides and may be found at said Cincinnati; and this defendant prays as it has already prayed.

ACTIVE MAN'F'G CO.,
P'r GEO. MONTIETH,
Sec'y & Treas.

STEM & PECK, *Att'ys for Def't.*

STATE OF OHIO, }
County of Hamilton, } *ss:*

On the 6th day of October, A. D. 1882, personally appeared before me, the subscriber, George Monteith, who, being duly sworn, says that he is the treasurer and secretary of the Active Manufacturing Company, respondent in said suit, and that he has read the foregoing answer; that he knows the contents thereof, and that the same is true as he verily believes.

GEO. MONTEITH.

Subscribed & sworn to before me this 6th day of October, A. D. 1882.

[SEAL.] EMMETT N. PARKER,
N. P., Ham. Co., O.

69 And afterwards, to wit, on the 7th day of October, A. D. 1882, there was filed in the clerk's office of the court aforesaid a certain affidavit in this cause; which affidavit is in the words and figures following, to wit:

Affidavit.

STATE OF OHIO, } ss:
County of Hamilton, }

George Monteith, being duly sworn, deposes and says that he is secretary and treasurer of the Active Manufacturing Company, defendant herein; that defendants have used all diligence in obtaining and setting up defenses in the above-entitled suit; that on Sept. 28th, A. D. 1882, for the first time, there came to his knowledge the facts set up in the supplemental answer hereto attached; that he could not have ascertained these facts before; that he believes the prior use set up in said answer to be a complete defense to the bill of complaint in this cause and essential to a complete defense.

GEO. MONTEITH.

Subscribed in my presence and sworn to before me this 6th day of October, 1882.

[SEAL.] EMMETT N. PARKER,
Notary Public, Hamilton County, Ohio.

70 And afterwards, to wit, on the 4th day of November, A. D. 1882, came the respondent and filed in the clerk's office of the court aforesaid a certain deposition of Wm. C. Peel in this cause; which deposition is in the words and figures following, to wit:

Circuit Court of the United States for the Southern District of Ohio.
In Equity.

GEORGE M. PETERS }
vs. } 3206.
THE ACTIVE M'F'G CO. }

The complainant will take notice that the defendant will examine witnesses in the above-named cause, under the 67th rule in equity, as amended, before Harry Rabbit, Esq., notary public, acting special examiner, at the Lagonda House, Springfield, Ohio, on Thursday, the third day of November, 1882, beginning said examination at 11 o'clock a. m. of said day and continuing from day to day until completed.

STEM & PECK,
Solicitors for Def't.

Received copy Oct. 31st, 1882.

WM. HUBBELL FISHER,
Solicitor for Compl't.

71 *Caption.*

Deposition of sundry witnesses taken before me, Wilber Calvin, a notary public within and for the county of Clarke, in the State of Ohio, on the 2nd day of November, in the year 1882, between the hours of 6 o'clock a. m. and 6 o'clock p. m., at the law office of Keifer & White, Springfield, in said county, pursuant to the annexed notice, to be read in evidence on behalf of the defendant in said action.

Depositions of Wm. Peel.

WILLIAM C. PEEL, being of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and saith.

Arthur Stem, for the defendant, and Wm. Hubbell Fisher, for the complainant, were present.

WILLIAM C. PEEL, witness on behalf of the defendant, being produced, deposeth and saith:

Q. 1. State your name, residence, and occupation.

A. William C. Peel; residence, Springfield, Ohio; occupation, manufacturer of carriage dash mouldings under the firm name of "Peel and Elster."

(Plaintiff objects to the taking of these depositions *as* on the ground that the notice for examination is irregular and that this day is the 2nd day of Nov., 1882, and not the 3rd, as mentioned in the notice.)

72 Q. 2 State whether or not you ever made and supplied to your customers any tools or machines for attaching moldings to dashes.

A. I did; I made four and supplied one to Emerson Fisher, Cincinnati, O.; Louis Cook, Cincinnati, O.; Davis, Gould & Co., Cincinnati, O. Cook's was burned and we replaced it.

Q. 3. State whether or not before making these and supplying them to your customers you took any steps to secure a right or license to do so.

A. We got a right to make them and supply them to our customers from George M. Peters, Columbus, Ohio, who had a patent on them, and gave me the number and date of the patent and told me to have them marked patented of that date, which I did. The date of the patent was June 6th, 1876, number 178,463.

Q. 4. State the circumstances under which this right was granted to you by Mr. George M. Peters.

A. I was in Columbus and called on Mr. Peters and told him some of our customers wanted machines for putting on moldings on dashes; I asked him if he would allow us to supply them. He then asked me how many I wanted to make. I told him three, but I did not say who the three were, but that they were some of our
73 customers at Cincinnati. He told me to go ahead, but did not give me any writings or anything of that kind.

Q. 5. Can you describe these machines which you made and supplied to your customers under that permission?

A. I do not know whether I can describe that or not. It is a sort of device to hold a dash, in which a dash is clamped with windlass on one end, whereto a strap with a hook on the end of it is attached. This hook or that hook fastens onto a hollow casing, unto which the molding is slipped while it is being drawn on the dash.

Q. 6. How does the molding fit into the casing or sheath?

A. It slips in from one end, the other end being closed.

Q. 7. Into what does it slip; a hole or channel or groove, if either?

A. I don't know whether it would be either or not. I thought it would be the casing that it slipped into.

Q. 8. What was the form of the opening in the casing that received the molding?

A. The opening would be in the letter "C" shaped. I don't know whether I answered that properly or not.

74 Q. 9. Then the opening in the casing that received the molding was open at one side, forming a groove or channel, shaped like the letter "C," was it?

A. I think that is correct.

Q. 10. I now show you letters patent number 178,463 and ask you whether the opening "*j*" in figure 5 resembles the opening for receiving the molding in the casing or sheath made by you, as above described?

(Objected to as leading.)

A. Yes; it was substantially like that.

Q. 11. Was any means provided for holding molding in this casing of different lengths?

A. Yes, sir; I believe, if I remember correctly, there was holes drilled through, and there was a pin passed through these holes running from one end of that casing toward the centre. Perhaps there were five or six holes, about two inches apart.

Q. 12. Do you mean that the pin ran from one end of the casing towards the centre?

(Objected to as leading.)

A. No; I don't mean that. I mean that the holes were put through the casing from side to side about two inches apart, so as to lengthen or shorten for the molding to be used.

75 Q. 13. How was the lengthening or shortening accomplished?

A. Well, in order to shorten the space we moved the pin towards the centre; to lengthen you moved towards the closed end.

Q. 14. Was any conditions asked or required by Mr. Peters as to the parties whom you might supply with these machines except the condition that they should be customers of yours?

A. I believe not.

Q. 15. Is the Active Manufacturing Company of Cincinnati, Ohio, a customer of yours?

A. They are.

Q. 16. About how long have they been customers of yours?

A. Oh, I should think three or four years.

(The complainant objects to the admission of this evidence on the ground that the notice for this examination is irregular, and, without waiving his objection, proceeds to cross-examine.)

Cross-examination by WILLIAM H. FISHER, of counsel for complainant:

X Q. 17. When were you in Columbus at the time mentioned in answer to ques. 4?

A. Well, I can't state just when; I should think about four year ago; it might have been longer.

76 X Q. 18. When was it George M. Peters gave you the license to make these three machines?

A. He did not give me any license; that is not what I understand by license; he gave me the right; he just merely said I could make them.

X Q. 19. When was it he said you could make them?

A. At the time I seen him in Columbus, in their office, four years ago, or longer.

X Q. 20. Was the time when you saw him in Columbus in May or June, '78?

A. I think it was in the fall of the year.

X Q. 21. What time in the fall of the year?

A. I think September or October.

X Q. 22. How did you come to think that George M. Peters would give you permission to make any of these machines?

A. My partner, Mr. Elster, first spoke about that.

X Q. 23. How many of these machines for putting on moldings had George M. Peters made before the time when, at Columbus, he gave you permission to make these three?

A. I don't know.

X Q. 24. Had he made more than one of these machines before that time?

77 A. I couldn't say.

X Q. 25. How many licenses to use such machines had George M. Peters granted before the time when you, at Columbus, obtained permission to make three such machines?

(Objected to as irrelevant and immaterial.)

A. I don't know.

X Q. 26. In an affidavit made by you and sworn to before J. S. Christee, notary public in and for Clarke county, State of Ohio——

(Ques. withdrawn.)

X Q. 27. Had George M. Peters, before the time when you, at Columbus, obtained permission to make three such machines granted to any one a license to use such machine or machines or any machine like them?

A. Not that I know of.

X Q. 28. In an affidavit made by you and sworn to before J. S. Christee, notary public in and for Clarke county, State of Ohio, on the 23rd day of June, A. D. 1881, you say "that in May or June, 1878,

some of the customers of the said firm wished some tools for attaching moldings to dashes for carriages and buggies to use in
78 connection with their business. Knowing that George M. Peters, of Columbus, was making such tools for attaching moldings to carriage dashes according to a patent granted to him June 6th, 1876, No. 178,463, and licensing others to use the same, affiant called on him while in Columbus while on other business, and explained to the said Peters the wants of his (affiant's) customers. After some conversation affiant obtained from Mr. Peters the right and privilege of making three of the said tools for attaching moldings to carriage dashes." * * * Now, are these statements which I have just quoted from a copy of your affidavit true?

(Ques. objected to upon the ground that no such affidavit is in evidence, and until it or a copy is offered in evidence question is incompetent.)

A. Well, it's all correct, but I may be mistaken in regard to those dates.

X Q. 29. Have you the affidavit which I have referred to in my last question?

A. Yes, sir.

X Q. 30. Will you produce it and make it a part of this deposition?

A. Yes.

(Witness gives notary affidavit.)

79 X Q. 31. At the time when, at Columbus, Mr. Peters gave you permission to make three of these machines where was the shop located in which you had the said interview with Mr. Peters?

A. It was northwest from where their present office is, across the street.

X Q. 32. Did you- interview take place in that shop; and, if yea, where was that office located, in reference to the shop?

A. It was in the southeast corner of the shop.

X Q. 33. After you had made these three machines for putting on moldings did you give one of them to the Active Manufacturing Company?

A. No, sir.

X Q. 34. When, if ever, was it that you first learned that the Active Manufacturing Company was using one of these machines which you made?

A. I can't state just when.

X Q. 35. Who was it first informed you said Active Manufacturing Company were using said machine?

A. I am not certain, but I think Mr. Peters, Mr. Firestone, or Mr. Peters' brother, I think. I don't know which, but one of that firm.

80 X Q. 36. What was said to you on that occasion?

A. I don't remember just what.

X Q. 37. What was it you said to them or one of them on that occasion?

A. If I said anything, I don't remember now what I did say.

X Q. 38. How did the firm or one of them happen to speak to you on that occasion and inform you that the Active Manufacturing Company were using said machine?

A. I don't know.

X Q. 39. How long ago was it that you were thus informed that said Active Manufacturing Company was using said machine?

A. Well, I should think from 18 months to two years; still I am only guessing at —, for I do not remember anything about it when it comes right down to a fine point.

X Q. 40. Have you had any interviews with Mr. George M. Peters or any one representing him since you were first informed that said Active Manufacturing Company were using said machine in which the subject of said company's using said machine was alluded
81 to? If yea, state who had these interviews with you, where said interviews took place, and when; also state what the conversations were.

A. Well, I guess I have talked with everybody in that firm about it, or they have with me, at Columbus. and Cincinnati, and here, I believe, with Mr. Firestone, brother of Mr. Firestone in the firm. Just what was said I cannot recall; it amounted to that they did not want the Active Manufacturing Company to use that machine. I guess that is all the answering I can do to that.

X Q 41. What were the efforts you made, if any, to cause the Active Manufacturing Company to desist from using the machine? Please describe said efforts in detail, both as to what you said and what you did.

A. I was asked by somebody of that firm to try and get that machine; I told them that I should go to Emerson, Fisher, whom we gave the machine to, and get it, if possible, back from the Active Manufacturing Company, and Mr. Emerson, of that firm of Emerson, Fisher and Company, told me, in the office of Emerson, Fisher and Company, if that was all I wanted he would get the machine.
82 He also after that conversation, told me in the presence of Mr. C. D. Firestone, that he would get that machine. This was on the same day the other conversation took place in front of the Gibson House, Cincinnati. That is all I guess I can answer to that.

X Q 42. When was the Active Manufacturing Company incorporated, and when did it begin business?

A. I don't know just when.

X Q 43. State when, as near as you can.

A. Well, I don't know whether they were incorporated when they started or not. They started four or five years ago—that is, as near as I can get at it; I mean the Active Manufacturing Company.

X Q 44. Will you tell us where it was you first learned the Active Manufacturing Company were using said machine?

A. Well, I hardly know where I first did hear that. It seems to me that I heard it from one of the firm of Peters Dash Company first. I suppose I heard it at Columbus. I don't recollect anything about it now.

X Q 45. When in your answers you say Emerson, Fisher, do
83 you mean Emerson, Fisher & Co., of Cincinnati? If not, what do you mean?

A. I meant to have said, in the first place, "Emerson & Fisher." I think I said after that "Emerson, Fisher & Co." Now I think it is called "The Emerson, Fisher Co."

X Q. 46. Did Emerson & Fisher or Emerson, Fisher & Co., Davis, Gould & Co. or Cook or the Active Manufacturing Co. ever pay you anything for said machines or their use?

A. No, sir.

X Q. 47. In your affidavit you say that the customers of the firm of Peel & Elster were to have the right to use said machines in their business. Do you mean by that that they were to have the right to use said machine in their own factory?

A. Yes.

X Q. 48. That is to say, when you gave the customer, as Emerson & Fisher or Davis, Gould & Co., the right to use said machine the right was to be confined to their own factory; is that the fact?

(Ques. objected to, as the facts and the nature of the agreement have already been fully stated.)

A. Yes, I guess so; it was looked at in that way at that time.

84 Redirect examination:

Q. 49. In the part of your affidavit quoted in cross-ques. 20 it is stated "that, knowing that George M. Peters, of Columbus, Ohio, was making such tools under a certain patent and licensing other- to use the same, you called on him and secured the privilege of making some for your customers," &c. State whether or not prior to that time George M. Peters had made any proposition to either of your to have these machines manufactured and sold generally to the public.

A. Well, I can't say whether it was prior to that or not, but he asked our Mr. Elster if we wouldn't make the machines and sell them to carriage makers generally. Mr. Elster has repeatedly mentioned this to me. (Ans. objected to as immaterial and incompetent.) When that affidavit was made I was called on at our office, and the gentleman to whom I made that or worded that statement wrote the thing up, and I know there were a great many alterations made in it from time to time, and when he got through writing it he says, "I guess I had better copy this thing, as it will look a little cleaner," or something to that effect; and then after he had got the
85 thing wrote he says: "In order to save time I will read this to you," as he was trying to make a certain train. He said he could read it faster than I could. I told him "All right." I did not know at that time that I had signed an article that said something that I did not know anything about, namely, that Peters was licensing others to make those machines or use them—I don't know which it says; make them, though, I think it says. Whether that gentleman got that in that affidavit in copying from the other I

don't know, but I didn't think it was there until seeing that affidavit to-day; that's all.

(The above explanation was made by the witness at his own request.

WILBER CALVIN, *Notary P.*)

Q. 50. When Mr. Peters authorized you to make three of these machines and supply them to your customers was anything said about what customers were to use these machines or where they were to use them, except that they were customers in Cincinnati?

A. I think not.

Recross-examination:

X Q. 51. In regard to the explanation that you have made with regard to said affidavit, is it the fact that you signed and swore to said affidavit without knowing its contents?

86 (Ques. objected to, as the witness has offered an explanation as to a short sentence only in the affidavit, which, as he explained, was overlooked in the hurried reading of the affidavit and its inaccuracy not noticed)

A. When I signed that I thought it was written just the same as the other was.

X Q. 52. State when and where you signed the said affidavit and when and where you swore to it; also state who the gentleman mentioned in your explanation as having procured said affidavit was, where he came from, and whom or what interest he represented.

A. I think I signed it in 'Squire Christee's office. I am not sure. I can't give the date. I don't know; the affidavit will show that. I swore to it at the same time and place. I don't know the name of the man who procured the affidavit. He said he represented the Active Manufacturing Co.

X Q. 53. Were you acquainted with said gentleman? How long a time were you and the gentleman engaged in relation to said affidavit; also, was the Active Manufacturing Co. a customer of yours at the time you gave said machines to Emerson & Fisher, Davis, Gould & Co., and the first time to Cook?

87 A. I did not know said gentleman. I think he came into our office about half past eleven o'clock, or it might have been twelve, and he was there, I think, till just about one; then we went to Squire Christee's; well, that was probably a quarter after one. I do not think the Active Manufacturing Co. was a customer of ours at the time we gave these machines. I don't think it was in existence at that time.

X Q. 54. Did Emerson admit to you that the machine which the Active Manufacturing Co. are using was the one that you gave to him—that is, to Emerson & Fisher?

A. When I first asked him about it he seemed to not know what I meant, and thought that the machine was still in their shop. After he got to studying over it he said he believed they did have it—that is, the Active Manufacturing Co.

X Q. 55. Referring to your answer to redirect ques. No. 49, did you not understand that if your firm made the said machines and sold them that Mr. Peters was to be paid for same such a sum as was to be agreed upon?

A. That I can't tell. You will have to go to Mr. Elster about that, as all the conversations were with him.

WM. C. PEEL.

88 Affidavit introduced into the deposition of Wm. C. Peel, at answer No. 30, in the said deposition, taken this 2nd day of Nov. 1882, in case Peters *vs.* Active M'f'g Co., U. S C. C., southern district Ohio.

WILBER COLVIN,
Notary Public.

STATE OF OHIO, }
Clarke County, } *ss:*

William C. Peel, of lawful age, being first duly sworn, deposes and says as follows, to wit: That he is a member of the firm of Peel & Elster, manufacturers of dash moldings and neck yokes for use in the carriage trade, which firm is engaged in business at Springfield, Clarke county, Ohio.

That in May or June, 1878, some of the customers of said firm wished some tools for attaching moldings to dashes for carriages and buggies to use in connection with their business. Knowing that George M. Peters, of Columbus, Ohio, was making such tools for attaching moldings to carriage dashes according to a patent granted him June 6th, 1876, No. 178,463. and licensing others to use the same, affiant called on him while in Columbus on other business and explained to the said Peters the wants of his (affiant's) customers. After some conversation affiant obtained from
89 Mr. Peters the right and privilege of making three of the said tools for attaching moldings to carriage dashes. It was distinctly understood between affiant and the said Peters that said tools were to be given to the customers of the said firm of Peel & Elster, and that the said customers were to have the right to use said machines in their business without any charge. Affiant further states that no mention was made at all as to whom those tools were to be given further than that the recipients were customers of Peel & Elster; that in accordance with the above permit from Mr. Peters said Peel & Elster made three of said tools and gave them to their customers.

The above permit and privilege was made verbally by Mr. Peters to affiant, and the conversation relating thereto took place in the office of the old shops of the Peters Dash Company, at Columbus, Ohio, about May or June, 1878.

WM. C. PEEL.

Subscribed and sworn to before me this 23rd day of June, A. D. 1881.

[SEAL.] J. S. CHRISTEE,
Notary Public.

90 I, Wilber Colvin, a notary public in and for Clarke county Ohio, do hereby certify that William C. Peel was by me sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed as above set forth was reduced to writing by me in the presence of the witness and was subscribed by said witness in my presence, and was taken at the law office of Keifer & White, Springfield, by consent of parties, in lieu of the place named in the notice, counsel for the defendant not waiving his objection to the date in the notice; that I am not counsel, attorney, or relative of either party or otherwise interested in the event of the suit.

[SEAL.] WILBER COLVIN,
Notary Public, Clarke Co., Ohio.

91 And afterwards, to wit, on the 9th day of November, A. D. 1882, came the defendant and filed in the clerk's office of the court aforesaid the depositions of John T. Richmond — in this cause, which said depositions are in the words and figures following, to wit:

Depositions of John T. Richmond and Others.

Circuit Court of the United States for the Southern District of Ohio.
In Equity.

GEORGE M. PETERS
vs. } 3206.
THE ACTIVE M'F'G CO.

Examination of witnesses on behalf of the defendant under the 67th rule, in equity, as amended, before Charles E. Brown, who is hereby agreed upon as special examiner under said rule, at the office of Stem & Peck, this fourth day of November, 1882.

Present: Wm. Hubbell Fisher for the complainant and Arthur Stem for the defendants.

By request of parties it is ordered that these depositions be taken by question and answer.

JOHN T. RICHMOND, a witness produced on behalf of the defendant, being first duly sworn, deposeth and saith in answer to interrogatories propounded to him by ARTHUR STEM, Esq., of counsel for the defendant, as follows:

92 Ques. 1. State your name, age, residence, and occupation.

Ans. John T. Richmond is my name; am thirty-two years old; residence, 168 Spring Grove Ave., Cincinnati, Ohio; occupation is carriage wood maker.

Ques. 2. State how and where you were employed in the year of 1873 and 1874.

Ans. In the after part of the year of 1873 I was employed by Emerson & Fisher; I was employed by Emerson, Fisher & Co. in 1874 all through the year.

Ques. 3. In what business and where were Emerson & Fisher engaged in 1873 & 1874?

Ans. They were in the carriage manufacturing business at 168 & 170 Finley street, Cincinnati, Ohio.

Ques. 4. State, if you know, about when Emerson & Fisher first began using moldings for dashes similar to Defendant's "Exhibit Dash Moldings."

Ans. In the fore part of the year of 1874.

Ques. 5. Did you have anything to do with putting these moldings on the dashes? If so, state whether you encountered any difficulties.

93 Ans. We found a good many difficulties in putting them on then; we had several devices for putting that molding on; finally got out a stick with a groove; groove was got so as to fit the molding.

Ques. 6. Who got up this device for putting on the molding?

Ans. I got up the stick myself.

Ques. 7. Have you a model or copy of that device which will illustrate the same? If so, produce it.

Ans. Well, I haven't got anything that will fully illustrate it; that comes as near illustrating it as anything I have.

(Witness here produced grooved stick or model, which is offered in evidence and marked Defendant's "Exhibit Richmond Sheath.")

Ques. 8. How did the device which you got up differ from this Exhibit "Richmond Stick?"

Ans. Well, the groove in my device was narrower at the top than this was—champered slightly round at the upper edges; that groove only run to the stop. Well, then, I had a ferrule on the end to keep it from splitting; ours was longer. I don't remember the length of the groove to the stop, but I should say thirty-six inches.

94 Quest. 9. Please look at figure five in letters patent No. 178,463 and state whether the opening marked J & K in said figure resembles the shape of the groove in your device, more or less, than this model.

(Complainant's counsel objects as leading and incompetent.)

Ans. It resembles it more than this model.

Ques. 10. State whether the stop or key in the "Richmond exhibit" is like the stop or key on the device made by you above referred.

Ans. Well, this is very much like it.

Ques. 11. Could the stop in this machine made by you be moved for moldings of different lengths?

Ans. It might have been moved by having different notches to put it in; we did not move it, however; we had no occasion to move that at all.

Ques. 12. Was this machine used for putting molding on dashes at the shop of Emerson & Fisher or Emerson, Fisher & Co.; and, if so, to what extent?

Ans. It was used there—putting on all the moldings that were put on there.

Ques. 13. When was it made and when used?

95 Ans. It was made in '74, in the fore part of the year; used there from the time of being made throughout the year, and I think a portion of '75.

Ques. 14. How do you fix the date when it was made?

Ans. Well, I remember the portion of the building I made it in, and shortly after that the department I was in was removed from that building to another.

Ques. 15. Do you remember the season of the year in which it was made?

Ans. Well, it was in the spring of the year.

Ques. 16. Do you remember the names of any of the men who used it?

Ans. I remember the name of one man who used it. I know two men used it, but the other man I never did know his name. The name of the man I do remember was Henry Stafer.

Cross-examination by WM. HUBBELL FISHER, counsel for complainant:

X Q. 17. In whose employ are you at the present time?

Ans. I am in the employment of the Electric Brush Light Company now.

X Q. 18. When did you leave the employ of Emerson & Fisher?

Ans. The last day of '75.

96 X Q. 19. At what time in the fore part of '74 did you first begin to use the device similar to "Richmond exhibit?"

Ans. Prior to the first of June.

X Q. 20. How long before the first of June?

Ans. I don't remember the date—probably two weeks. I would give it as my opinion as two weeks before that.

X Q. 21. Would you be as likely as anybody to know the correct date when they began to use the device?

Ans. No. Men that were making dashes there at that time would be more likely to remember the date.

X Q. 22. Who were the men that were making dashes there at that time?

Ans. Henry Stafer was one of the men, and this other man that I did not know his name was the other; *that I did not know his name was the other.*

X Q. 23. Was it you who got out this stick with a groove similar to "Richmond exhibit?"

Ans. Yes.

97 X Q. 24. Why is it that you think that you say that men making dashes at the time when the "Richmond exhibit" was used would remember the date when it was first used better than you would?

Ans. Well, these men were having more or less trouble in putting that molding on; they, being right in that department, would remember it better than me.

X Q. 25. How do you fix the date when the said exhibit was first gotten up as about the middle of May, 1874?

Ans. Well, the locality of the shop wherein I made it is what I go by.

X Q. 26. Please explain how the locality of the shop in which you made it enables you to fix the date when you first made said device similar to "Richmond exhibit."

Ans. Well, there was a partition run between the wood shop and trimming department that caused me to move my bench into a darker portion of the building; that changed or moving of the partition was made about the beginning of warm weather. The stick or device I made was made right after that change.

X Q. 27. About when did the warm weather begin in '74?

Ans. About the usual time; that's my recollection of it.

98 X Q. 28. You think, then, that was about the middle of May, do you?

Ans. Yes.

X Q. 29. In the first one of the device- you made similar to "Richmond exhibit" was the portion of the device against which the end of the molding rested, while the device was used, to push the molding on the dash made of wood or of metal?

Ans. Well, it was a wood stick with a piece of iron let into the stick at the end of the groove.

Mr. Peck, of counsel for def't, says that he thinks that witness misunderstands the question.

Question was reread to witness, and the witness answered as follows: Says the first one was all wood with a piece of iron let in at the end of the groove.

X Q. 30. What was the shape of the piece of iron that was let in at the end of the groove?

Ans. Well, the piece of iron was square or thereabouts; might have been larger one way than the other a little.

X Q. 31. If you made another of these devices similar to "Richmond exhibit" how was the other one made?

Ans. I made no other while in their employment.

99 X Q 32. Then, as I understand you, this device which you have described is similar to the "Richmond exhibit," which you invented; was the only device of that kind which you used or know of being used in the factory of Emerson & Fisher and Emerson, Fisher & Co. while you were in their employ; was such the fact?

Ans. That — the only one I know of being made or used by them.

X Q. 33. How did you happen to be the one to get up said device?

Ans. Well, I had charge of their wood shop and done most of the jobbing of a similar kind.

X Q. 34. Who, if anybody, asked you to get it up?

Ans. Mr. Fisher, of the firm; Mr. J. W. Fisher.

X Q. 35. When was it that Henry Stafer used this device?

Ans. He used it soon after I made it.

X Q. 36. About how soon after you made it was it first used, and who used it first?

Ans. It was probably twenty minutes from the time it was made until it was first used; I used it myself first with the assistance of Mr. Stafer.

100 X Q. 37. In one of your answers you say that the device you invented and used resembled——

(Question withdrawn.)

X Q. 37. Mention what other workmen besides those you have named saw the said device you invented and which is similar to "Richmond exhibit?"

Ans. Mr. George Fisher, a brother of J. W. Fisher, Mr. Wm. Fisher, another brother of his, Henry Russia; there was a number of other men saw it that I don't know their names; I didn't at that time.

X Q. 38. Where does Henry Russia live?

Ans. I am not able to answer that question; he has moved out of the city however.

X Q. 39. Did you, since the year 1876, make an application for United States letters patent, and was the same put into interference with an application of George M. Peters (complainant) for letters patent for improvement in dashes; and, if yea, were you or said Peters successful?

(Objected to by Mr. Peck, counsel for def't, as improper cross-examination, irrelevant to any issue here in controversy, and with

101 instruction to the witness that he may decline to answer if he does not wish to disclose any inventions of his now pending in the Patent Office.)

Ans. I decline to answer — question.

Re-examination by counsel for defendant:

Ques. 40. Was the use of your sheath for putting moldings in the fore part of 1874 a secret one?

Ans. No; it was used openly by any one that saw fit to use it.

Ques. 41. Have you any idea how many moldings were applied to dashes with your sheath when you were in the employ of Emerson & Fisher or Emerson, Fisher & Co.?

Ans. No; I couldn't give any correct idea about it?

Ques. 42. Can you state or not whether it was a large number?

Ans. I can't answer that question closely.

Ques. 43. What is your opinion, as near as you recollect?

Ans. From twelve to fifteen hundred.

Recross-examination by counsel for complainant:

X Ques. 44. Who first requested you to come here to testify, and also have you had any communication with Mr. Lowe Emerson, Mr. Fisher, of same firm, or with any one for them during

102 the year of 1882 in relation to the said device similar to "Richmond exhibit?"

Ans. Well, Mr. Monteith requested me to come and testify. I have had no communication with Mr. Emerson, Mr. Fisher, or any one of his firm during this year.

J. T. RICHMOND.

Adjourned to half past nine on Monday morning, November 6, 1882.

CHARLES E. BROWN,
Notary Public and Acting Sp'l Ex'r.

Also LOWE EMERSON, of lawful age, being first duly sworn by me in the above cause, deposes and says as follows, being a witness produced by defendant:

Ques. 1. State your name, age, residence, and occupation.

Ans. Name is Lowe Emerson; am 45 years old; residence, College Hill, Hamilton county, Ohio; am carriage builder.

Ques. 2. State whether you were engaged in the same business in 1873 or 1874 and give the title of the firm.

Ans. I was engaged in the same business in 1873 an 1874, under the firm name of Emerson and Fisher in 1872 and 1873, and, I think, as Emerson, Fisher & Co. in 1874.

103 Ques. 3. State, if you remember, about when your concern began using metallic moldings on dashes similar to Defendant's Exhibit Dash Molding.

Ans. In the spring of 1874.

Ques. 4. State whether any device was gotten up in your shop or used there for putting these moldings on the dashes.

Ans. Yes, sir.

Ques. 5. Can you describe that device and use any of these exhibits you choose?

Ans. The device was similar to this one in some respects (referring to Richmond exhibit). It was made of hard wood, with a groove to place the molding in to keep it from bending, and the stick was made longer than the molding; we put on different lengths molding, and the stick was longer than our longest molding, say 27 to 30 or 33 inches; we had different lengths moldings.

Ques. 6. Who, if you know, got this up and at whose orders?

Ans. I presume that it was gotten up by the foreman of the wood shop; I presume by my orders, but I can't state positively.

Ques. 7. When, as nearly as you recollect, was this device first used at your shop?

104 Ans. I should think soon after we commenced to use this kind of a rail (referring to Exhibit "Dash Molding"). I know what my habits are in reference to anything of that kind; when we commence using a new thing if it doesn't work well I see what the matter is and take means to perfect its use, and I therefore presume in the use of this, as it would be liable to bend in putting on by a party that did not understand it, that I gave instructions to make something to put it on with that would hold it steady.

Ques. 8. State whether or not this device separated satisfactorily

and was used in your shop in your business for putting moldings on dashes.

Ans. It was used to some extent, but some of my men, when the seam in the leather was small, would take the molding and slip it on with their hands. I recollect one instance of asking one of my men why he did not use it one day, and he said it was more bother than it was worth; that he could do it just as well without it.

Ques. 9. When it was used was it or was it — a practical and successful machine for the purpose intended?

105 Ans. I considered it so.

Ques. 10. Was it used in your shops for putting on moldings.

Ans. It was.

Ques. 11. Was there any secrecy about its use?

Ans. None at all. I did not consider it of enough importance.

Ques. 12. How soon after you began using dash moldings should you say the device like "Richmond exhibit" was first made and used?

Ans. I should say very soon after. I could not give dates.

Ques. 13. Do you remember whether you purchased the first moldings, like "Exhibit Dash Moldings," which you used from Peel & Elster, or whether you purchased from other parties before you began using the Peel & Elster molding?

Ans. My impressions are now that we purchased of Peel & Elster, but I could not say positively.

Cross-examined by WM. HUBBELL FISHER, counsel for complainant:

X Q. 14. Describe more fully the device which you say was similar in some respects to "Richmond exhibit."

106 Ans. My recollections of it are now that it was a piece of inch-and-half square hard wood, about thirty to thirty-three inches long, with a groove cut or dug in one side of it, sufficiently large to take in the dash molding, as this does here (referring to "Richmond exhibit"), and I think the first one we made had from two to three inches of the solid wood where the groove was not cut that the molding might go back against it, holding it in its position in sliding it on.

X Q. 15. Was the metallic stop present in the said device used?

Ans. I do not remember, positively; I think we made one and put a nail or screw to hold the molding.

X Q. 16. In the first of these devices which you used was there a metallic stop present?

Ans. I could not say.

X Q. 17. When did you first begin to use the device with a nail or screw to serve as a stop?

Ans. I could not give any dates as to that.

X Q. 18. State, as nearly as you can, where and how long

107 after it was after you began using the first device that you began using the device with a screw or nail as a stop.

Ans. I am not positive, but the device with a nail or screw was on

the first machine, but my impressions are that the first machine wore out by driving in the end, by driving on the molding, and we put a nail or screw on to hold the molding in its position, and the time would be at the time or soon after we begun using this device for putting the molding on the dashes.

X Q. 19. What was the shape of the groove in the devices viewed in cross-section as compared with the groove in "Richmond exhibit?"

Ans. I should say it was a similar groove, made a little straighter than this one.

X Q. 20. What was the length of the groove of the said device?

Ans. I should say from 25 to 29 or 30 inches.

X Q. 21. How do you fix the spring of 1874 as the time when you began to use dash moldings similar to Exhibit "Dash Molding?"

Ans. Because we bought dash moldings at that time, and I don't think we would buy them unless we used them.

108 X Q. 21. Please give me the exact date when you first bought such dash moldings.

A. I cannot.

X Q. 22. Will your books show?

Ans. I presume they would if the bills have not been destroyed.

X Q. 23. Of whom did you purchase dash moldings before you bought them of Peel and Elster?

Ans. I could not say positively.

X Q. 24. State as near as you can.

Ans. I don't know that we bought of any one before we bought of Peel & Elster. It is possible we might have bought of Kemper Bros., of Cincinnati, or Robert & Phillips, of Philadelphia, or another company in Philadelphia, whose name I do not now remember, or of C. Vanham & Co., of New York.

X Q. 25. At the time you first used said device what workmen were employed in and about the rooms and apartment where said device was used and dash moldings applied to dashes?

Ans. Valentine Flicksteiner, Henry Stafer; I think George Fisher was, but am not certain, and the reasons I recollect these men

109 is because they are now working for us and have been for ten years.

X Q. 25½. What was the name of the workman that did not use the device because he could do better without it?

Ans. William Fisher.

X Q. 26. When did you first begin to purchase dash moldings of Peel & Elster and where were they located?

Ans. I think in the spring of 1874; they are now located at Springfield, Ohio, but don't remember where they were in 1874.

X Q. 27. State whether or not you have ever used a device for putting dash moldings onto dashes other than the device or devices which you have described as similar to "Richmond exhibit;" if yea, describe the device, of whom, if any one, you got it, and when you got it, how long used the same, and what became of it.

Ans. We had a machine similar in some respects to this, with a groove for holding the molding and a stop attached to the machine

and passing over a roller, with a crank to it to draw the molding on by turning the crank. It was sent to us by Messrs. Peel &
110 Elster, of Springfield, Ohio. I wouldd't say when we got it. We used it but very little; could not say how long. It went to the Active Manufacturing Company of Cincinnati, Ohio.

X Q. 28. In this machine that came from Peel & Elster how was the strap attached to the machine?

Ans. I don't remember exactly how it was.

X Q. 29. Did the machine you got from Peel & Elster have *have* adjustable stop or stops?

Ans. I can't say as to that.

X Q. 30. Did you get this machine from Peel & Elster during 1874 or later?

Ans. I could not say; it was a thing of little importance, and therefore did not charge my mind with it.

X Q. 31. When Peel & Elster sent you said machine did they write to you or have any conversations with you at or about that time?

Ans. Just before the machine was sent to us Mr. Peel was in our office and stated he had a machine for putting on dash moldings which would be a benefit to us and he would send it to us;
111 do not remember any correspondence in reference to the matter at that time; do not think there was any.

X Q. 32. Did you at any time before Mr. Peel promised to send you said machine say you would like to have such machine or that you wanted a machine for putting moldings on dashes?

Ans. I don't remember of any such conversation.

X Q. 33. Is it possible that you did say anything to that effect?

Ans. Hardly possible, at said time.

X Q. 34. Did you pay Mr. Peel or Messrs. Peel & Elster anything for said machine or the use of it?

Ans. Not that I know of; my understanding was that it was a gift from Messrs. Peel & Elster.

X Q. 35. Have the Active Manufacturing Company paid you for such machine or for the use of it?

Ans. Not to my knowledge.

X Q. 36. State, then, how the Active Manufacturing Company come to get the said machine from you, when they got it, and what, if anything, was the consideration for your giving said machine to them and allowing them to use it.

112 Ans. Mr. Monteith, of the Active Manufacturing Company, met me one day, I think, on 4th street in Cincinnati and asked me if we hadn't such a machine in our factory, and he asked me if we were using it. I told him we had, and were not using it. He asked me if I would loan it to him or let him have it. I don't remember the words used. I told him that I did not know that it was of any use to us and didn't know of any reason why he could not have it to use. He paid nothing for it or for its use, to my knowledge; don't know — date when the Active Manufacturing Company got the machine from us.

X Q. 37. At the time when you gave the Peel & Elster machine to the Active Manufacturing Company were you manufacturing all

of your own dashes, or were you buying all or the greater portion of the dashes you used in the manufacturing of carriages?

Ans. At the time they got the machine we were making some dashes ourselves, but buying the larger portion we used.

X Q. 38. Were you applying the dash moldings to the dashes you were then manufacturing; and, if yea, by what machine or
113 in what way were you applying them?

Ans. We did not apply many, and presume we put on by hand what we did put on.

X Q. 39. At the time when the Active Manufacturing Company procured said Peel & Elster machine from you were you buying ready-made dashes of said Active Manufacturing Company, and is it not true that since that time you have been buying dashes in large quantities of said Active Manufacturing Company and are now one of their customers of ready-made dashes?

Ans. Yes; I think it is true we were buying dashes at that time; we have bought dashes of the Active Manufacturing Company in larger or smaller quantities up to this time.

X Q. 40. State approximately how many dashes per week on the average you bought of the Active Manufacturing Company.

(Objected to by Stem & Peck, counsel for def't, as immaterial and not cross-examination.)

Ans. Don't know.

X Q. 41. Did Mr. Peel ever ask you or requested you to get that Peel & Elster machine back from the Active Manufacturing Company?

(Same objection as above.)

114 Ans. Mr. Peel came to our office, I think, some time last year—possibly it might have been some time this spring—and asked me if he could have the machine he sent us, and I think that I said to him at the time, Certainly; that we had no use for it, thinking it was in our factory at the time, but upon learning that the Active Manufacturing Company had it I think I told him there would be no trouble in getting it any time Peters wanted it; for them to send us word when they did want it, and during this conversation at this time with Mr. Peel was the first that I knew or remember of knowing that the machine was claimed as a patented article by Mr. Peters. Mr. Peters has not sent for the machine yet, as I know of. I would state further that Mr. Peel has since been in my office talking about the machine, and I again told him when Mr. Peters wanted the machine let us know and we would send it to them.

X Q. 42. Did Mr. Peel at the time he asked to get this machine for him tell you that the Active Manufacturing Company had said machine, or words to that effect?

(Same objection.)

Ans. I could not say.

X Q. 43. Did you not pledge yourself in the presence of
115 Mr. Peel and Mr. C. D. Firestone that you would get said Peel & Elster machine back from said Active Manufacturing Company?

Ans. I don't remember of doing it; if I had I think I should have done it, for I could have had the machine at any time by simply asking for it.

Redirect examination by counsel for def't:

Ques. 44. Were there other men working in the department where moldings are put on dashes other than you have named?

Ans. Yes; a larger number of them during the number of years we used that machine for putting on dash moldings.

Q. 45. Are your recollections as to the details of that machine made in your shop accurate, or would the man who made it be more apt to remember the details of construction?

Ans. I gave my impressions or recollections only; the man who made it would be more likely to remember details.

Recross-examination by counsel for complainant:

X Q. 46. Who were these other men referred to in your answer to question 44?

Ans. I couldn't answer that question.

LOWE EMERSON.

116 MONDAY MORNING, *Nov. 6th*, 1882.

Examination continued.

JOHN W. FISHER, being first duly sworn by me in the above cause, deposes and says as follows:

Quest. 1. State your name, age, residence, and occupation.

Ans. John W. Fisher is my name; my age is 45; reside — Cincinnati, Ohio; am manufacturer of carriages; am a member of "The Emerson and Fisher Co."

Ques. 2. Please look at Exhibit "Richmond Sheath." State, if you know, what it represents, and whether you ever saw such a device, and where.

Ans. Well, I have seen it used at the factory—our factory—and I have used it; it represents a machine for putting on dash moldings.

Ques. 3. State, if you know, by whom said machine which was used at your factory was made.

Ans. It was made by the foreman of the wood department, John Richmond.

Ques. 4. In what year was it made, if you know?

Ans. In 1874.

Ques. 5. Do you know in what part of the year of 1874?

Ans. Well, it was in the spring; I don't exactly know; it was in the spring of 1874.

117 Ques. 6. When did your firm first buy dash molding, if at all, of Peel & Elster, of Springfield, O.?

Ans. In May, 1874; about the 20th of May, 1874.

Ques. 7. Do you know whether your firm had bought similar moldings of other parties before buying of Peel & Elster, above stated?

Ans. Well, I think we did buy some of other parties before we bought of Peel and Elster, but I can't say who.

Ques. 8. What led to the making of this sheath for putting on these moldings?

Ans. Keep them from bending.

Ques. 9. Please explain a little more fully what you mean.

Ans. Well, in driving these moldings on we used to take or have a hickory stick for driving them on, and a great many would bend—would bend all up; that was the reason we had this machine, to keep them straight and keep them from bending.

Ques. 10. Did this necessity for keeping the moldings straight arise with the first moldings of the character which you put on dashes?

Ans. Yes, sir.

118 Quest. 11. Do you remember about what was the length of that first machine made by Richmond?

Ans. It was from 30 to 36 inches.

Ques. 12. State, as near as you can, how it was made.

Ans. Well, it was a piece of hard wood grooved out to fit this molding. I think the first we made had nothing but a wooden stop, and it then afterwards—I couldn't say now whether it was a nail or screw we put in then for a stop, for after driving awhile the molding would sink into the wood.

Ques. 13. Do you recollect whether such a stop as is shown in this exhibit, "Richmond Sheath," was used in that first machine made by Richmond?

Ans. I do not recollect that.

Ques. 14. Was this machine used by your firm to any extent?

Ans. Well, we used it for nearly all our dashes after we commenced using moldings.

Ques. 15. How was this used, with regard as to privacy or publicity?

Ans. Well, it was not very private, for it just laid out there where everybody could see it; everybody in the factory could see it.

119 Ques. 16. Did your firm ever subsequently have any other machine for putting on this class of moldings?

Ans. Only had the one that Peel & Elster sent us down, and that staid up in the stock-room there without being used. They could put them on a great deal better and quicker by driving them on than with that machine; I mean the Peel machine.

Quest. 17. Did your firm own that machine gotten from Peel?

Ans. Well, Mr. Peel sent it down to me, and there was never anything more said about it. He sent the machine to us and we kept it. The machine was sent down by express to us.

Quest. 18. Did you consider it your property?

(Objected to as immaterial.)

Ans. I did.

Quest. 19. Who is the Peel of whom you are speaking, who sent you this machine?

Ans. Peel of Peel & Elster, of Springfield.

Quest. 20. Did the use by your firm of the Richmond machine begin as soon as said machine was made?

Ans. Yes, sir.

Cross-examination by WM. HUBBELL FISHER, counsel for complainant:

120 X Q. 21. Was the Exhibit "Richmond Sheath," now before you, used in your factory; and, if yea, when was it used?

Ans. This exhibit was never used.

X Q. 22. When was this exhibit made, who made it, and under whose directions was it made?

Ans. I don't know.

X Q. 23. In practice how was the device like Exhibit "Richmond Sheath" used?

Ans. Well, placing (referring to Richmond sheath with the molding exhibit in it) one end of the molding upon one corner of the dash; then driving in.

X Q. 24. By what means did you drive the molding onto the dash; did you use a hammer or anything of that kind in connection with the sheath?

Ans. We used a kind of a mallet and sometimes a hard piece of wood made specially for it—a kind of a flat mallet.

X Q. 25. You must have first have applied a molding to the grooved stick; you first laid the molding in the groove; then applied the molding and stick in driving the molding onto the dash?

Ans. Yes, sir.

121 X Q. 25½. When you used a hickory stick for driving on the moldings why would a great many of them bend up?

Ans. Nothing to hold them in their place.

X Q. 26. Who was the foreman of your wood shop?

Ans. Witness asks: At that time? Counsel says: During the year- of '73 & '74.

Ans. John Richmond was the foreman.

X Q. 27. Did John Richmond, your foreman, make the grooved sticks for applying the moldings to dashes, and which grooved sticks you have referred to in your various preceding answers?

(Objected to, as witness has referred to but one grooved stick or sheath by Richmond, and as therefore misleading.)

Ans. Yes, sir.

X Q. 28. When you received the Peel & Elster machine, which you say Peel sent you by express, did you receive a letter from Peel or Peel & Elster along with said machine?

Ans. I think not.

X Q. 29. How did you know the said machine was from Peel?

Ans. He told some one at the factory he was going to send
122 one down; I don't remember whether is was me or some one else.

X Q. 30. Was the said stock-room in your factory the place where goods or stock were kept, and was that a room where manufacturing took place?

Ans. Yes, sir; but no manufacturing was done in it; nobody was allowed in there but the stock-keeper.

X Q. 31. Was the said Peel & Elster machine kept in the stock-room all the time you had it, or was it or any part thereof used in your factory?

Ans. Well, it was kept in the stock-room until I loaned it to Mr. Monteith; I ain't positive, but I think I went up and got it for him myself.

X Q. 32. Does your doubt expressed in the last answer refer to the use of the machine in your factory or as to whether your were the man, the particular one, who got the machine out of the stock-room for Monteith?

Ans. Well, as to using machine, we didn't use it; we could not get the men to use —; they would not be bothered with it. I think I am the man that got the machine for Monteith.

123 X Q. 33. Why are you not positive whether your firm bought moldings of other parties before buying of Peel & Elster?

Ans. Well, I have forgotten all about it; I know there were parties there from the East, but I can't say whether we bought of them—Kemper Bros.

X Q. 34. How is it that you are enabled to fix upon the 20th day of May, 1874, as the date when you first began to buy molding of Peel & Elster, and yet cannot tell the time when said prior to 20th May, 1874, you bought similar moldings of other parties, and also cannot tell the names of those other parties who sold the same to you?

Ans. The reason I can tell the 20th of May is because I looked at the invoice; I have forgotten as to other parties.

X Q. 35. Has your firm any record or records of the names of the parties, other than Peel & Elster, who sold you such moldings prior to 20th May, 1874, or of the dates when such moldings were sold you by said other parties?

Ans. I don't know.

X Q. 36. Will your examine and see whether your firm has any such record or records, and if they have will you produce the
124 same, and if you find them bring the said dates and names and add them to your deposition?

Ans. I am so busy I can't do it to-day, but will look it up and will write a note to the examiner, which may be attached to deposition as an answer to the above question.

X Q. 37. In what department of your factory, under whose supervision, by whom, and for how long was the device similar to "Richmond sheath" used?

Ans. It was used in the finishing department, where we set up the

buggies; we might call it our wareroom; it was our wareroom at that time. It was used by the men that set up the work—finish it off; Valentine Fleckstine, Charles Bishop, Henry Staver were among the men that used it; it was used, I suppose, for a year and a half.

X Q. 38. At what time of the spring of 1874 are you positive that a device similar to "Richmond sheath," or substantially thereto, was first made?

Ans. I don't remember.

X Q. 39. How, then, do you know that such machine was used in the spring of 1874?

Ans. Because we had spoiled several moldings and found this plan to keep them from bending.

125 X Q. 40. Will you swear positively that said machine was used in May, 1874?

Ans. No, sir; I would not swear to anything unless I know positively.

X Q. 41. Will you swear positively that said machine was used as early as May, 1874?

Ans. No, sir.

X Q. 42. Will you swear positively that it was used as early as June, 1874?

Ans. I wouldn't swear positively to any particular month.

EXHIBIT.

Lowe Emerson, tre's. J. W. Fisher, vice-pres.
J. H. Parvis, sec'y.

The Emerson & Fisher Company, carriage builders; office and factory, corner John & Findlay streets.

CINCINNATI, *Nov. 8th*, 1882.

Reply to yours of ——.

C. E. Brown, Esq., city:

I have looked over our invoices prior to May 20, '74, but cannot find any dash rail previous to that date.

Yours, J. W. S. FISHER.

Exhibit Fisher letter in answer to questions 36 and 44 of his examination.

CHAS. C. BROWN,
Notary Public, H. C., O.

126 X Q. 43. Will you swear positively that said machine was made as early as June, 1874?

Ans. No, sir; I couldn't swear positively when it was made.

X Q. 44. How many moldings did you buy of said Peel on the said 20th day of May, 1874?

Ans. I don't know; I could tell you very easy if it was left open to reply to in my note to the examiner, and I will do so.

X Q. 45. Was the said machine or machines similar to Richmond exhibit provided with a ferrule?

Witness asks what is meant by ferrule. The matter is explained to the witness and he answers there was no ferrule on it.

X Q. 46. In what direction in the grooved stick was the nail or screw inserted?

Ans. Right down in the groove. (Witness points vertically down in the groove.)

X Q. 47. Did the nail or screw enter the stick at the open part of the groove and pass vertically down through said groove into the wood at the bottom of said groove in a vertical plain transverse to the length of the stick, or did the nail or screw enter the stick
127 at the edge of the stick and pass horizontally across the stick through the groove, being held in position by the wood on both sides of the groove?

Ans. It entered the stick as described in the first part of your question.

X Q. 48. You have given the length of this stick or machine; will you please give the other dimensions of the same?

Ans. I don't remember.

X Q. 49. Did you or your firm of Emerson & Fisher or Emerson, Fisher & Co. pay the firm of Peel & Elster or either of them anything for the machine for putting on moldings furnished you by Peel, of Peel & Elster, or for the use of said machine?

Ans. Did not.

X Q. 50. Did the Active Manufacturing Company pay you or your firm of Emerson & Fisher or Emerson, Fisher & Co. anything for the machine mentioned in the last question or for the use of the same?

Ans. No, sir.

X Q. 51. State when it was *when* you delivered said machine to Mr. Monteith, of the Active Manufacturing Company.

Ans. I don't remember when.

128 X Q. 52. Will you be kind enough, when you examine your records to ascertain how many molding similar to those you bought of Peel & Elster your firm bought per month during the year of 1875 and the year of 1874, on and after May 20th of the latter year, and add such statement to your letter above mentioned?

(Counsel for def'ts instructs the witness that if such search requires him to occupy any amount of time and if the disclosures sought is in any way prejudicial to his business he may decline to answer the question, which is objected to as irrelevant and immaterial.)

Ans. I decline to answer it.

Redirect examination by counsel for def't:

Q. 53. In cross-question 25 you were asked whether in applying the moldings to the "Richmond sheath" you first laid the molding in the groove and replied *yet*. Did you means that the molding could be laid into the groove from the top; in other words, was the groove of that "Richmond sheath" so constructed that the molding could be laid in it from the top or did it have to be slipped in from the end?

(Objected to as in the nature of causing the witness to contradict his own testimony previously given, and incompetent.

129 Counsel for complainant requests notary to certify as to how counsel for def't explained the molding and Richmond sheath and applied same together during the progress of the above question and afterwards. Notary saw counsel for def't hold the Richmond sheath horizontally and apply the molding to the groove.

Counsel for def't says that he took the Exhibit "Richmond Sheath" and dash molding and with them tried to explain to witness exactly what he meant by his question, so there could be no misunderstanding as to the point inquired about.

Counsel for complainant states that counsel for def't laid the dash molding upon the open side of the groove and pressed the molding down upon said open side, thereby illustrating that the said molding would not readily enter the open side of said groove, and he objected to said manipulation of the said exhibit as leading, and therefore not proper redirect examination.

Ans. I think it slipped in the end.

Q. 54. You are not then positive about this?

Ans. I am not.

Q. 55. What is your best recollection on this point?

130 Ans. I think it went in from the end, but am not positive.

Q. 56. Do you remember when John Richmond came first to work for your firm?

Ans. No, sir; I do not.

Q. 57. You are not, then, sure of his having been at your place in '73?

Ans. I think Richmond worked in the factory before he was made a foreman; I think he worked as a journeyman.

Q. 58. Do you recollect when he was made foreman—exactly when he was made foreman?

Ans. I do not.

Recross-examination:

X Q 59. About how long did the thin latteral wooden edges of the groove in the device like "Richmond exhibit" stand or wear before wearing wide enough to allow the molding to be laid flatwise in the groove through the longitudinal opening of said groove?

(Objected to as assuming that there were thin latteral edges in the original Richmond sheath, of which the exhibit here present is but a rough representation.)

131 Ans. I couldn't say how long?

X Q. 60. State, as nearly as you can, how long.

(Same objection, and for the further reason for the degree of hardness or toughness of the wood is not taken into consideration.)

Ans. I don't know how long it would last.

JOHN W. FISHER.

HENRY STAVER, being by me first duly sworn, deposes and says, in answer to interrogatories by counsel for defendant, as follows:

Ques. 1. State your name, age, residence, & occupation.

Ans. My name is Henry Staver; age is 30; residence, 440 W. Liberty, Cincinnati, Ohio; carriage trimmer.

Ques. 2. Where were you employed during the years of 1874 and '75?

Ans. With Emerson, Fisher & Co., carriage manufacturers, in Cincinnati.

Ques. 3. Did you, while with Emerson & Fisher, in the year of 1874, put any moldings on dashes; if so, what sort of moldings were they and how were they put on the dashes?

Ans. Well, I put moldings on in 1874 and '5 for Emerson,
132 Fisher & Co.—Peel & Elster's molding from Spingfield, Ohio. Well, first place, if the leather was too heavy it split the point of the molding and slipped it on the dash from the end, using a mallet for a little while to drive it on. Well, it was a troublesome and tiresome job, and one day the foreman of the wood shop, John Richmond, says to me and another young man, "Use this here," giving us a device something similar to the Richmond sheath. The machine Richmond gave us was a good deal better than the mallet we used to drive them on with.

Quest. 4. Describe, as nearly as you can, how that machine Richmond gave you was constructed.

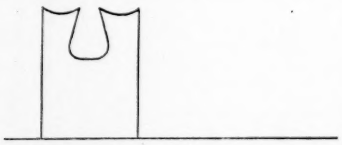
Ans. Well, it was a hard piece of wood about an inch and a quarter or an inch and an eighth wide, about 36 inches long, the groove about 30 inches in that piece of wood; the groove was similar to this molding (referring to dash molding); the handle was about six inches long; then we had a mallet to drive it on.

Quest. 5. What was the groove for?

Ans. To steady the molding and to get it on straight, so the stitches would not show.

Quest. 6. Can you make a sketch showing the end of the
133 wood and showing the location of the groove in it?

Ans. I think I can.



Witness makes the above sketch with pencil, which the examiner fills in with ink.

Quest. 7. How was the molding applied to the groove in this stick which Mr. Richmond gave you when it was desired to use the same to put moldings on dashes?

Ans. Well, in the first place, we would take the molding and slide it on the dash one, two, or three or four inches, just according to how the leather was; then we would take this machine (referring to Richmond sheath) and slide it right on the molding from the end until —

the end of the groove of the machine. What I have reference to is, after the molding was in the groove we slide the molding and the machine right onto the dash in its right position; then we take the machine off, and if the molding is too long on the dash file it off and put two little screw- on each end, and it would be finished.

134 Quest. 8. Was there anything in the groove in this machine which would act as a stop for the end of the molding in the groove to rest against; if so, what was there to act as a stop?

(Objected to as leading.)

Question withdrawn. New question.

Ques. 8. How far into the stick did the groove extend from its end?

Ans. About thirty inches.

Ques. 9. Was there anything at the end of this groove; if so, what?

Ans. Well, there wasn't anything there, only it was grooved out about 30 inches and the balance of the stick was plain; it wasn't grooved out at all.

Ques. 10. What, if anything, prevented the molding from slipping all the way through the stick from one end and out at the other?

Ans. The stick was about 36 inches long, grooved out about 30 inches from one end, and then from the 30 inches to the end of the stick there was no groove at all; as far as the groove went, it was cut off blunt as deep as the groove was, so as to keep the molding from slipping out at the end.

135 Ques. 11. Do you remember whether any metal device was used at the inner end of the groove for the end of the molding to rest against?

(Objected to as leading.)

Ans. I do not.

Quest. 12. When was it that Richmond gave you this device?

Ans. I am pretty sure it was in the spring or summer of '74.

Quest. 13. What is your best recollection as to the time?

Ans. I can't give no definite answer on that—not as regards the date.

Quest. 14. Do you recollect how soon it was after Emerson and Fisher first got molding from Peel & Elster that this Richmond device was used?

Ans. Well, they got moldings in '74 from Peel & Elster and we slipped the molding on and used the mallet a little while; how long did we use that molding I don't know; we put the molding on the other way about two or three or four months; how long I can't say exactly.

Quest. 15. So far as you are absolutely positive might it have been a couple of weeks after Emerson and Fisher first got moldings from Peel & Elster that you began to use the Richmond

136 device for putting them on?

(Objected to as leading.)

Ans. Well, I don't know; I don't believe it was any sooner than what I said awhile ago, because we had considerable trouble and spoiled a good many moldings before we got this machine.

Ques. 16. What was the extent of the use of this Richmond machine and how did it work? Before answering this question, however, state whether you know when Emerson & Fisher first got moldings of Peel & Elster.

Ans. Well, early in '74; about February or March. It was used for putting on about 40 or fifty a week; sometimes more and sometimes less; it was used for every dash—about three years, if not longer, it was used. It worked all right.

Ques. 17. If you were told for a certainty that Emerson & Fisher got their first moldings of Peel & Elster on the 20th of May, 1874, would you then say that it was as much as three or four months after that before Richmond gave you his device as specified?

Ans. Well, I don't know about 4 months, but I would say it would be about two months after they got the first moldings if they
137 got the first the 20th of May.

Quest. 18. Was the use of this Richmond device in Emerson & Fisher's shop a secret use?

Ans. No, sir.

Quest. 19. Are you testifying merely from your recollection as to the dates, or have you any data by which you can fix the time when the Richmond device was first used?

Ans. It is my present recollection as regards this dash molding, because early in 1874, about January or February, there was a carriage built at Emerson, Fisher & Co.'s which Morrison, the silver-plater, made a patent dash rail on, one dash up there, and it didn't work very well and they begin to use the Peel & Elster moldings right after that, and then we used a mallet a little while to put the molding on the dash; then we used the device here (referring to Richmond device or sheath).

Cross-examination by WM. HUBBELL FISHER, counsel for complainant:

X Q. 20. In whose employ are you now?

Ans. Emerson & Fisher Carriage Company.

X Q. 21. Have you been employed by Emerson and Fisher
138 continuously since 1874?

Ans. Well, it was Emerson, Fisher & Co. up to Jan. 1st, 1882, and after the 1st of Jan., 1882, it was the Emerson & Fisher Carriage Company.

X Q. 22. After you were first employed by Emerson, Fisher & Co., in 1874, did you work for said company continuously up to 1882, and have you since worked for the Emerson & Fisher Carriage Company up to the present time?

Ans. Yes, sir; worked there continually up to the present time.

X Q. 23. Did the device which Richmond furnished you and which was similar to Exhibit "Richmond Sheath" wear out, or what become of it?

Ans. As regards to wearing out, I don't know whether we ever

got any more made or not. I suppose it was thrown aside after they bought the dashes from the Peters Dash Co., Columbus, Ohio. It was lost sight of because we had no more use for it. Me and Valentine Fleckstein put them on together, or anybody that was in the wareroom there.

X Q. 24. Was it your business to put the moldings onto the dashss and did you have a knowledge of what moldings were put onto dashes since the time when you first began to put them on?

139 Ans. In regards to its being my duty, I was doing the trimming in the finishing department and Valentine Fleckstein — doing the hanging off in the blacksmith department, getting work ready to ship. If I would get done with my work first I would help him to put them on, or sometimes when we were in a hurry—he wasn't ready to put the moldings on—I put it on myself so it would be ready to ship. As regards to knowledge, John Fisher told us how to put it on, and we have been doing it ever since; I think it was John Fisher. Yes, sir; I had a knowledge of what kind of moldings were put onto dashes.

X Q. 25. Do you mean that John Fisher showed you how to put the moldings onto dashes with machine like the "Richmond sheath," or did Richmond himself show you how to use said machine?

Ans. Well, it wasn't John Fisher that showed us how to put the molding on the dash with the Richmond device; I think it was John Richmond, being as he brought the machine down to us.

X Q. —. In applying the molding to the dash by means of the device similar to Exhibit "Richmond Sheath" did you

140 employ a mallet; and, if yea, did you use the mallet upon that end of the grooved stick which was not grooved?

Ans. If we did use the mallet we used it on the end that wasn't grooved; occasionally we used the mallet, and when we did use it we just shoved it on by hand, provided the leather was not too heavy.

X Q. 27. Did that portion of the grooved stick which was at the end of groove and which acted as a stop against which the end of the molding rested wear, or was it sound and serviceable at the end of the three years when you ceased using it?

Ans. To my best knowledge it was. It was all right, as well as I remember. I suppose it was sound, for we had no more use for it.

X Q. 28. As I understand you, after Mr. Richmond furnished you with the device similar to "Richmond sheath" the said device was employed to put the molding on all the dashes, and when the molding went on hard a mallet was used in connection with the device. Am I correct in this understanding?

Ans. Yes, sir.

X Q. 29. How thick was the said device similar to the "Richmond sheath?"

141 Ans. It must have been about three-quarters of an inch, as well as I remember, from top to bottom.

X Q. 30. If a metal device similar to that shown in Exhibit "Richmond Sheath" had been placed at the inner end of the groove in the

device which Richmond furnished you would you have remembered that fact?

Ans. Well, I don't know whether I would or not. I never paid particular attention whether they made an improvement by adding that after or not.

X Q. 31. Was there any such metallic stop in the said device Richmond furnished you during the three years you were acquainted with him?

Ans. Well, I can't say whether there was or not.

X Q. 32. Give me the names of the workmen who at any time used said device similar to Exhibit "Richmond Sheath;" also of those workmen who were near to the place where said device was employed or who would know of the use of said device.

Ans. William Fisher, living at Fairmount, was one; a man named Charles Bishop, I think, and I think another man working there was Albert Stevens, living on John St. somewhere, in
142 Cincinnati, Ohio; Valentine Fecksteiner, on York Str., Cincinnati, and myself (Henry Staver). I lived, at the time, No. 504 John Str., city. One or two more were working there; what there names was I don't know. That's all I know of.

X Q. 33. Do you mean to say that the above list mentioned in your last answer are all of the workmen who during the three years the said device similar to Exhibit "Richmond Sheath" was in use knew of or used said device?

Ans. Well, I don't know as I do. I know there has been more men at work up there. I would like to explain that there are men work- there off and on. Some work one week, two weeks, or so on; some work until they are discharged; and I don't know—I suppose them fellows never paid any attention to that machine. That's all I know of.

X Q. 34. You have told us that Emerson, Fisher & Co. used dashes purchased from the Peters Dash Company. Now, will you tell us whether said firm of Emerson, Fisher & Co. have used dashes purchased from the Active Manufacturing Company? And, if yea, tell us about how many they have used with Peel & Elster moldings.

143 Objected to as entirely irrelevant, and the witness is instructed not to answer the question for the reason that there is another suit pending between these same parties in which the dash inquired about is the patent of controversy, and for the further reason that the employees of the witness on the stand have been both examined in this cause and a full opportunity given to inquire into all relevant matters. Counsel believes and thinks that the information here sought is intended for use by the complainant herein either against Emerson & Fisher or against defendants herein in another cause, and he is led to this belief for the reason — the information sought has no relevancy whatever to the issue in this controversy.

Counsel for complainant here informs the defendant, through his counsel, that the information here sought is not intended for use by the complainant herein, either against Emerson & Fisher or against

the defendants herein, in another cause, and insists upon his right to have said question answered; and in case said question is not answered the complainant reserves the right to move that this deposition be struck from the records of this case.

Counsel for defendant still refuses to permit the witness to answer until the complainant will either show the relevancy of his
144 question or get an order of court.

X Q. 35. During the three years you were employed in putting moldings on by means of the device furnished by Richmond how many moldings were put on the dashes?

Ans. Well, I couldn't tell how many were put on.

X Q. 36. State as nearly as you can.

Ans. Well, I don't know as I could make any statement or come any way near it; say 5,000.

HENRY STAVER.

Adjourned till nine o'clock Tuesday morning.

CHARLES E. BROWN,
Notary Public, Acting Sp. Ex.

TUESDAY MORNING, *Nov. 7th*, 1882.

VALENTINE FLECKSTEINER, being first duly sworn, deposeth and says, in answer to interrogatories put to him by counsel for def't, as follows:

Quest. 1. What is your name, age, residence, and occupation?

Ans. Valentine Flecksteiner is my name. My age is 22; residence, 307 W. Liberty St., Cincinnati, Ohio; am a carriage finisher.

145 Quest. 2. Where and how were you employed during the years of 1874 and 1875?

Ans. Employed in the wareroom of Emerson, Fisher & Co. as finisher.

Quest. 3. Did you have anything to do with the putting of moldings like this Exhibit "Dash Molding" on dashes in the shops of Emerson & Fisher in 1874?

Ans. Yes, sir.

Quest. 4. Had you at that time any tool or device for putting these moldings on dashes?

Ans. Yes, sir.

Quest. 5. Describe what that tool or device was and where you got it?

Ans. It was a long piece of wood, I guess about 37 to 40 inches long; about an inch and a quarter by inch; had a groove in about 32 inches long; there was an end, I think about three inches, sol-d, to stop the rail from going through.

Quest. 6. What was the groove for?

Ans. Why, to put the molding in.

Quest. 7. How was the molding put into this groove?

146 Ans. Put in right from the end and shoved right up to the solid part of the end to stop it, and then we drove it on afterwards.

Ques. 8. What do you mean when you say we drove it on afterwards, and what did you drive on?

Ans. We drove the molding onto the dash.

Ques. 9. How did this machine work?

Ans. Well, it worked first rate.

Quest. 10. State, as near as you can, when you first began to use this machine, if you recollect.

Ans. In 1874, between the months of May and July, I think—the best I know.

Quest. 11. Who made this machine, if you know?

Ans. Mr. Richmond—Mr. John Richmond; he was foreman of the wood department.

Quest. 12. About how long was this machine used and what was the extent of its use?

Ans. Well, it was used a good while, I guess; well, I couldn't mention any time exactly—can't recollect.

Quest. 13. Do you recollect positively whether it was used as much as a year?

Ans. It was used a year or more.

147 Quest. 14. Was the use of this machine a secret use?

Ans. No, sir.

Cross-examination by WM. HUBBELL FISHER, counsel for complainant.

X Q. 15. For whom have you worked since 1874?

Ans. Emerson, Fisher & Co.

X Q. 16. Have you worked continuously for them since that time?

Ans. All except about two weeks. I worked for G. D. Haydock for about two weeks about two years ago.

X Quest. 17. At the said factory of Emerson, Fisher & Co. dashes made by the Active Manufacturing Company were used, were they not; and, if yea, did you ever apply moldings to said dashes with the tool or device you got from Richmond?

(Objected as irrelevant and improper cross-examination.)

Ans. They were used not at that time that I can recollect. I never applied moldings to the dashes of the Active Manufacturing Company with that tool; they used to get dashes—I don't know where; they had no rails on then. I used to put them on.

148 X Q. 18. In what year, to the best of your recollection, did the tool or device Richmond furnished you cease to be used in factory of Emerson, Fisher & Co.?

Ans. 1874.

Counsel for def't requests notary to explain the question, as witness evidently don't understand the question, which done witness answer-, Guess about 1878.

X Q. 19. What makes you think it was about 1878 when the said factory ceased using said tool; how do you fix the date?

Ans. Well, much as I can recollect, they bought the dashes with the rails and all on them; they had no need for the tool after buying the dashes with the rail on them.

X Q. 20. Then you are sure the said factory did not stop using the Richmond tool in '77, are you?

Ans. Well, as I said before, I said about 1878 they stopped it. I can't say any better; that's the best I know.

X Q. 21. About how many moldings were put on dashes at the said factory by said Richmond tool, first, during the year of 1874; second, during the year of '75, and during the year- of '76, '77, & '78 giving the number per year?

149 Ans. Well, I couldn't keep account of that; much as I know we put on right smart, but I could not tell you how many; can't say.

X Q. 22. About how many did you put on per week by means of that Richmond tool?

Ans. I would say from seventy-five to one hundred, taking it all around.

X Q. 23. Did this Richmond tool ever wear out?

Ans. Well, it wore a little bit, but it didn't hurt it any.

X Q. 24. Where, in what places, did it wear?

Ans. It wore at the end—the end where it was solid—against which the rail stopped, right at the groove; the rail cut the wood where it stopped.

X Q. 25. Why was the groove in this Richmond tool thirty-two inches long?

Ans. Because we used to have rails from 27 to 33 inches long.

X Q. 26. Will you swear positively that this Richmond tool was thirty-seven inches long and had a groove thirty-two inches long?

Ans. Much as I can recollect, just as I said before.

150 X Q. 27. When you say rails in your answer do you mean molding?

Ans. Yes, sir.

X Q. 28. Which length of molding did your factory use the largest number of? I refer to those mouldings that you put on by means of the Richmond tool, which you say were from 27 to 33 inches long.

(Objected to as immaterial.)

Ans. 27 & 28 were the lengths mostly used.

X Q. 29. How many of the 27 and 28 inch moldings were put on, as compared with the thirty-two and thirty-three inch moldings?

(Same objection as above.)

Ans. Well, there wasn't many thirty-two and thirty-three at all; we only used these thirty-two and thirty-three on extra jobs.

X Q. 30. Then the 27 & 28 inch moldings were the ones you mainly used; is that correct?

(Same objection.)

Ans. I can make that a better answer than I did before; put in 27, 28, 29, & 30; the 27's & 28's & 29's were used the most.

X Q. 31. How do you fix the time when you first began to use the Richmond tool?

151 Ans. Much as I can recollect, in 1874, between the month- of May and July. Why, I think it was about that time; I think the fire up there was about that time; I don't know exactly.

X Q. 32. What fire?

Ans. When the factory burned.

X Q. 33. How does this fire enable you to remember about the time you first used the Richmond tool?

Ans. Witness requests notary to ask him again the question about the fire; he believes he made a mistake about it; after explanation he says leave out the fire business altogether, as he don't recollect whether it was before or after, but I think the fire was after we began using the tool.

X Q. 34. If the fire don't help you to fix the date when you first used the Richmond tool, how are you enabled to fix said date?

Ans: Because we was busy at that time, and I used to drive these moldings on with a hickory club; and they used to bend, and Mr. Emerson came along and seen these rails bending up, and he says that wouldn't do; we would have to get some way to put

152 those on without bending; so after while I got this stick from Richmond and I used it.

X Q. 35. How do you fix the time when Mr. Emerson came along and saw these moldings bending up as between the months of May and July, '74, rather than August or September, '74?

Ans. Well, I didn't say it was between July and May when Emerson came along; I said he came along one day.

X Q. 36. How do you fix the time when you first began to use the Richmond tool as between the months of May and July, 1874, rather than in the month- of August and September, 1874?

Ans. Because we were busy at that time, and this here stick that we had wouldn't do.

Counsel for def't asks witness what stick he refers to, and witness answers, hickory club, and not the Richmond tool; after that we got this here Richmond stick; I mean by after that, after we found the hickory stick wouldn't do.

X Q. 37. Were your said factory busy during August or September, 1874?

153 Counsel for def't asks counsel for complainant to refer particularly to some department of said factory, as the inquiry hitherto has been directed only to the putting on of moldings, and not as to the whole business of building carriages by the factory of Emerson, Fisher & Co.

(Question withdrawn.)

X Q. 37. In your previous answer, when you say we were busy at that time, to whom do you refer?

Ans. Why, the firm. I was busy of course, but I meant the firm.

X Q. 38. First, cross-question 37 again asked.

Ans. They were not as busy then as in July, as much as I can recollect.

X Q. 39. What makes you recollect that they were more busy in July than in August or September?

Ans. Because I had to do more work at that time.

X Q. 40. Will you swear positively, now that eight years have passed, that you were more busy in July, 1874, than in August or September of that year?

Objected to as improper, argumentative, and as an attempt to intimidate the witness.

154 Ans. Well, the reason I said this, as much as I can recollect, we ship buggies now; it is our bussiest time in the year; I wouldn't swear positively.

X. Q. 41. Who worked with you at the time you put moldings onto dashes by means of the Richmond tool?

Ans. As much as I can recollect, Mr. Henry Staver and a young man I think whose name was Dyer or Dwyer or Dryer, and Wm. Fisher, John Fisher. That's all I can recollect now. John Fisher and Henry Staver were the men that helped me most. I couldn't say as to Wm. Fisher, for he was not there more than half the time. John W. Fisher was a member of the firm. His full name is W. Fisher; spoken of above as John Fisher.

X Q. 42. Did all of the men mentioned in your last answer, at one time or another, help you in using said Richmond tool?

Ans. I said yes; helped me whenever I needed them or whenever I asked them.

X Q. 43. Give me, if you can, the first name of said Dreier (written before Dryer), where he lives, and about when he quit working for Emerson, Fisher & Co; also tell me in what department
155 of the factory he worked while in the employ of Emerson, Fisher & Co.?

Ans. Andy was his first name. I don't know where he lives now; at that time he lived at Maloney's, a private boarding house, the corner of Melanchton and John streets, Cincinnati. I don't know when he quit working for Emerson, Fisher & Co. He worked in the wareroom. I would not call him a finisher, though he was handy at blacksmithing.

X Q. 44. During your employment by Emerson, Fisher & Co., do you recollect of any other machine or tool being used in their factory for putting moldings on dashes, besides the Richmond tool?

(Objected to as irrelevant, improper cross-examination, and only to consume time.)

Ans. Yes, sir.

X Q. 45. About when was it used; how extensively was it used; whose machine was it; who made it; where did it come from and what became of it?

(Same objection as above.)

Ans. I can't recollect when it was used; well, it was used every

once and awhile. I could not say whose machine it was. I
156 have heard lately whose machine it was. I don't know who made it. I don't know where it came from; well, I don't know where it went to.

X Q. 46. Whose machine have you heard it was and who do you understand has that machine now?

(Objected to as calling for hearsay, together with the former objection.)

Ans. It is got from the man that makes rails—Peel & Elster; the Active Dash Company have it, I understand.

X Q. 47. In what manner did you use said machine; did you use it as you used the Richmond tool?

Ans. No, sir; we did not use it as the Richmond tool; why, we bolted it down to a bench, fastened the dash in it. I placed the molding in the groove of the stick of the machine. I placed the molding on top of the dash; there was a long strap about two inches wide with a ring on it. I placed this ring into a hook that was on the stick, and there was a crank on the end of the machine and I drawed the molding right on to the dash.

X Q. 48. Of what material was the stick in this machine?

Ans. It was made of wood.

VALENTINE FLECKSTEINER.

157 Defendant's counsel here gives notice that he rests and notifies complainant's counsel that he wants this case tried next February.

Adjourned.

CHARLES E. BROWN,
Notary Public, Acting Special Examiner.

UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

I, Charles E. Brown, a notary public in and for the county of Hamilton, Ohio, do hereby certify that the foregoing depositions of John T. Richmond, Lowe Emerson, John W. Fisher, Henry Staver, and Valentine Flecksteiner was, when taken, then and there reduced to writing by me in the presence of said deponents and by them subscribed in my presence after having been so reduced *in* writing.

And I further certify that for taking said deposition a fee of $35.00 has been paid to me by the defendant, and that the same is reasonable and just for the services performed.

I further certify that the sum of $7.50 was paid by the defendants to said witnesses as fees for their attendance herein.

EXHIBIT.

Chas. E. Brown, city:

158 In reply to yours of 16th will say that there were 12 pieces in the package—that is, 12 rails.

Yours truly, J. W. FISHER.

Circuit Court of the United States, Southern District of Ohio. In Equity.

GEORGE M. PETERS
vs.
THE ACTIVE M'F'G CO. } 3206.

It is hereby stipulated by and between the above-named parties that the within answer is the answer of John W. Fisher to cross-interrogatory No. 44 of his deposition, taken on behalf of respondent in the above case on Nov. 6th, 1882, and the answer hereto attached shall be attached to said deposition and is hereby made a part thereof.

Cincinnati, O., Dec. 2nd, 1882.

WM. HUBBELL FISHER,
For Complainant.
STEM & PECK, *For Respondent.*

I further certify that I have retained and sealed up the said depositions to be delivered to the clerk of the said court.

159 I further certify that I am not of counsel or attorney for either of the parties to said suit nor interested in the result of said suit.

Given under my hand and official seal, at Cincinnati, in said southern district of Ohio, this the 8th day of November, A. D. 1882.

[SEAL.] CHARLES E. BROWN,
Notary Public, Ham. Co., Ohio.

160 And afterwards, to wit, on the 27th day of December, A. D. 1882, came the complainant and filed in the clerk's office of the court aforesaid the depositions of William Knopp and others in this cause, which said depositions are in the words and figures following, to wit:

Circuit Court of the United States, Southern District of Ohio. In Equity.

GEORGE M. PETERS
vs.
ACTIVE M'F'G CO. } 3206.

The respondent will take notice that the complainant will examine witnesses in the above-named cause under the 67th rule in equity, as amended, before Charles W. Loomis, Esq., notary public and acting special examiner, at the Bennet Hotel, in Binghamton, in the county of Broome and State of New York, on Saturday, the 23d day of December, 1882, beginning at 9 o'clock a. m. of said day, and continuing said examination from day to-day until completed.

Cincinnati, O., Dec. 20th, 1882.

WM. HUBBELL FISHER,
Of Counsel for Compl't.

Received copy Dec. 20, 4 p. m., but object to notice as insufficient in point of time.

STEM & PECK,
Counsel for Def'ts.

161 *Deposition of Wm. Knopp et al.*

United States Circuit Court, Southern District of Ohio. In Equity.

GEORGE M. PETERS
vs.
THE ACTIVE M'F'G CO. } 3206.

Depositions taken on behalf of the complainant under the 67th rule in equity, as amended, pursuant to the annexed notice, before Charles W. Loomis, a notary public in and for the county of Broome, in the State of New York, by consent of parties acting special examiner.

Present: J. W. Firestone, Esq., solicitor for complainant.
No one appearing for def't.

WILLIAM KNOPP, a witness produced on behalf of the complainant, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes and says in answer to interrogatories propounded by J. W. Firestone, Esq., solicitor for complainant:

Ques. 1. State your name, age, residence, & occupation.

Ans. My name is William Knopp; age is 57; residence is the city of Binghamton; occupation is a machinist.

Ques. 2. Where was you employed and how in Sept.,
162 1872, and how long were you so employed?

Ans. I was employed in the comb factory of Noyes Bros. & Co. at Binghamton, and was so employed from 1865 to 1869.

Ques. 3. Was J. P. Noyes a member of that firm at that time?

Ans. He was.

Ques. 4. While in the employ of Noyes Bros. & Co. was you familiar with the kind of machinery manufactured by them for use in their comb manufactory?

Ans. I was.

Ques. 5. In September, 1867, or at any other time, did you make machinery for putting metallic backs on combs?

Ans. I did.

Ques. 6. Without going into detail as to the kind you did make, I will ask you whether, in Sept., 1867, you made or help- make a machine for putting moldings on the backs of combs, where the molding is held in a groove which fits it closely and the same groove has an extension enough smaller to fit the comb
163 closely, and in this extension there slides a "follower" which is fitted to abut against the end of the comb. At the extreme opposite end of the groove there is a slot across the groove containing a key or stop to prevent the molding from sliding through the groove. The follower is attached to a suitable slide or lever, so that

when a molding is laid in the larger part of the groove and the comb in the smaller part the comb is prevented from bending by the walls of the groove, and can be forced tightly into the molding by the action of the follower and of the connecting parts?

Ans. I do not remember that I made anything of that kind.

Ques. 7. Did you at any other time make such a machine?

Ans. I don't remember that I did.

Ques. 8. Please examine the comb I now hand you and state whether Noyes Bros. & Co. at that time when you wor-ked for them and since manufacture a comb with metallic back similar to this one; &, if so, state how said metallic back was put on the comb.

(Comb marked Exhibit A shown witness and offered in evidence by solicitor for compl'ts.—C. W. L., Ex.)

164 Ans. They manufactured a comb in general appearance similar. The metallic back was put on and fastened to the comb by compression. The back was compressed in a vice to make it fit in a groove in the comb tightly. The molding was placed on the comb by hand and then put in a vice and the molding pressed up tightly against the comb.

Ques. 9. Do you remember working on or making machinery for compressing the molding on the comb as above described?

Ans. I do.

Ques. 10. Is the mode above described the only way Noyes Bros. & Co. put metallic moldings on that kind of a comb?

Ans. It is.

Ques. 11. You was familiar at that time with the mode employed by them for putting moldings on combs, was you?

Ans. I was.

WM. KNAPP.

Sworn to and subscribed before me this 23rd day of Dec., 1882.

CHARLES W. LOOMIS,
Notary Public.

165 PETER NEWMAN, a witness produced on behalf of the complainant, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes and says, in answer to questions propounded by J. W. FIRESTONE, Esq., solicitor for complainant:

Ques. 1. State your name, age, residence, & occupation.

Ans. My name is Peter Newman; my age is 41 years; my residence is Binghamton, N. Y., and my occupation is comb-making.

Ques. 2. Where are you now employed and how long have you been so employed?

Ans. I am employed in the comb manufactory of J. P. Noyes & Co. and have been so employed since 1862.

Ques. 3. Do Noyes & Co. manufacture combs with metallic backs?

Ans. Yes, sir.

Ques. 4. Are you familiar with the kind of machinery used by

Noyes & Co. during the entire time of your employment for putting moldings on the backs of combs?

Ans. I am.

Ques. 5. Please examine the comb I now hand you and
166 state by whom it was made.

Comb marked "Exhibit M" shown witness and offered in evidence by solicitor for complainant—C. W. L., Ex.

Ans. J. P. Noyes & Co.

Ques. 6. Do you know the kind of machinery used to put the metallic backs on combs? And, if so, please describe the process.

Ans. I do. The comb is first grooved and the metallic back is shoved on by hand, then the comb and back is put in a die and the metallic back is pressed into the groove of the comb by the die. The metallic back is afterwards closed up at the ends.

Ques. 7. During what period of time has this process been employed by Noyes & Co.?

Ans. Ever since they have made combs in Binghamton.

Ques. 8. Since they have been in Binghamton is the process you have described the only one they have used for putting such metallic backs on combs?

Ans. It is.

Ques. 9. Do Noyes & Co. manufacture a comb similar to
167 the one I now hand you, marked "Exhibit N;" and, if so, how do they put the metallic backs on such combs?

Ans. They do manufacture a comb similar in general appearance to the one shown me. They put metallic backs on them by the same process I have described.

PETER NEWMAN.

Sworn to and subscribed before me this 23rd day of Dec., 1882.

CHARLES W. LOOMIS,
Notary Public.

JOHN COYLE, a witness produced on behalf of the complainant, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes and says in answer to interrogatories propounded by J. W. FIRESTONE, Esq., solicitor for complainant:

Ques. 1. State your name, age, residence, & occupation.

Ans. My name is John Coyle; my age is 39 years; my residence is the city of Binghamton; my occupation is comb-making.

Ques. 2. Where are you now employed, and how long have you been so employed?

Ans. I am employed in the comb factory of J. P. Noyes & Co.; have been in their employ for 14 or 15 years.

168 Ques. 3. Do you know the process and the kind of machinery used by J. P. Noyes & Co. during the time of your employment for putting moldings on the backs of combs?

Ans. I do.

Ques. 4. Please examine the comb I now hand you, marked "Exhibit M," and state by whom made.

Ans. The comb shown me is made by J. P. Noyes & Co.

Q. 5. State, if you know, how the metallic molding or back is put on the combs by J. P. Noyes & Co.

Ans. The horn sawed and grooved properly to fit the metallic case loose, then the back is put on by hand, then the comb and back is placed in a squeezing machine that tightens the back on, and the ends are closed over.

Ques. 6. During what period of time have Noyes & Co. used this process for applying such metallic backs to combs?

A. As long as I remember.

Ques. 7. Do you know of their having applied such metallic backs to combs in any other way?

Ans. They have not on dressing combs.

169 Ques. 8. Do Noyes & Co. manufacture a comb similar to the one marked Exhibit N and which I now show you; and, if so, how is the back put on?

Ans. They do make a similar comb, and they apply the backs in the same way.

JOHN COYLE.

Sworn and subscribed before me this 23rd day of Dec., 1882.

CHARLES W. LOOMIS,
Notary Public.

ANDREW MCAULEY, a witness produced on behalf of the complainant, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes and says in answer to interrogatories propounded by J. W. FIRESTONE, Esq., solicitor for complainants:

Ques. 1. State your name, age, residence, & occupation.

Ans. My name is Andrew McAuley. My age is 49 years, and reside in Binghamton. My occupation is comb-making.

Ques. 2. Where are you now employed, and how long have you been so employed?

Ans. I am employed by J. T. Noyes & Co., and have been in their employ about 30 years.

170 Ques. 3. Do you know the process and the kind of machinery used by Noyes & Co. during the time of your employment for putting metallic moldings or backs on combs?

Ans. I do.

Ques. 4. Please examine the comb I now hand you, marked "Exhibit M," and state by whom it was made.

Ans. It was made by J. P. Noyes & Co.

Ques. 5. State, if you know, how the metallic moldings or backs are put on the combs by J. P. Noyes & Co.

Ans. The combs are first grooved; then the metallic backs are put on by hand; then they are put in a squeezing machine, and the backs tightened to the combs.

Ques. 6. Do Noyes & Co. manufacture a comb similar to the one I now show you, marked "Exhibit N;" and, if so, how is the back put on?

Ans. They do manufacture a comb similar in general appearance, and the backs are put on in the way I have described.

A. McAULEY.

Sworn to & subscribed before me this 23rd day of December, 1882.

CHARLES W. LOOMIS,
Notary Public.

171 This examination was taken at the place mentioned in the annexed notice of examination and reduced to writing and by the several witnesses subscribed and sworn to this twenty-third day of December, 1882, before me—

CHARLES W. LOOMIS,
Notary Public in and for Broome County, N. Y., and Acting Special Examiner Mentioned in the Annexed Notice of Examination.

Witness fees, paid, $4.00.
Examiner's fees, paid, $5.00.

172 And afterwards, to wit, on the 12th day of January, A. D. 1883, came the complainant and filed in the clerk's office of the court aforesaid the depositions of James W. McCurley and others in this cause, which depositions are in the words and figures following, to wit:

Circuit Court of the United States for the Southern District of Ohio.
In Equity.

GEORGE M. PETERS
vs.
THE ACTIVE MANUFACTURING CO. } 3206.

The respondent will take notice that the complainant will examine witnesses in the above-named cause, under the 67th rule, in equity, as amended, before Herman Merrell, Esq., notary public and agreed acting special examiner, at the office of Wm. Hubbell Fisher, No-. 12 & 13 Wiggins' block, Cincinnati, Ohio, on Friday, the fifth day of January, 1883, beginning said examination at 10 o'clock a. m. of said day and continuing from day to day until completed.

Cincinnati, O., Jan'y 2d, 1883.

WM. HUBBELL FISHER,
Sol'rs for Complainant.

173 Service of a copy of the above is hereby acknowledged this 2nd day of Jan., 1883.

STEM & PECK,
Sol'rs for Def'ts.

Depositions of James W. McCurley et al.

Circuit Court of the United States for the Southern District of Ohio.
In Equity.

GEORGE M. PETERS
vs. } 3206.
THE ACTIVE MANUFACTURING CO.

Examination of witnesses on behalf of the complainant under the 67th rule, in equity, as amended, pursuant to the annexed notice.

Present: Wm. Hubbell Fisher, Esq., for the complainant, and C. M. Peck, Esq., for the respondent.

By request of parties it is ordered that the depositions be taken by question and answer.

JAMES W. MCCURLEY, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by WM. HUBBELL FISHER, Esq., of counsel for the complainant, as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is James W. McCurley; age, 36 years; resi-
174 dence, 155 Livingston street, Cincinnati; occupation, carriage trimmer; I have also been engaged in the manufacture of carriage dashes.

Ques. 2. What were you doing in 1875, and where were you?

Ans. I was working at my trade, carriage trimmer, with Emerson & Fisher, in Cincinnati.

Ques. 3. When did you begin to work with Emerson & Fisher, and when did you leave their employ?

Ans. I commenced to work either in the latter part of August or beginning of September, 1874, and left in the beginning of May, 1875.

Ques. 4. How continuously did you work for them during that time?

Ans. I believe I only lost a half a day during all that time.

Ques. 5. During the time you were at Emerson & Fisher's at what branch of the business did you work?

Ans. Trimming.

Ques. 6. State whether or not Emerson & Fisher, while you worked for them, made leather-covered dashes; &, if yea, in what department were such dashes made?

Ans. At that time they made all the dashes used by them and they were made in the trimming department.

175 Q. 7. In what style or mode were the top edges or top portions of the dashes usually constructed during the time you were at Emerson & Fisher's?

Ans. They were generally trimmed off and blacked. Along in 1875 there were a few moldings used.

Ques. 8. Tell us how the moldings were put onto the top edge of the dashes and in what room or department were the moldings put onto the dashes?

Ans. They were driven on with a hammer and sometimes by the use of a mallet or club. They were put on in the wareroom or finishing room.

Ques. 9. Give us one of the reasons why the moldings were put on in the finishing department?

Ans. Because they had to bolt the dash on the body so as to hold it firmly to admit of the driving on of the molding.

Ques. 10. State how difficult it was to drive on the moldings; in other words, whether or not it required much driving.

Ans. It was a very difficult matter to drive those moldings on, as they generally went on so tight as to either batter up the molding
176 at the end by driving against or by bending the molding so as to make it useless after having succeeded in getting it part way on. In many cases it was so bent that it had to be taken off entirely and thrown away as destroyed and useless.

Ques. 11. In your answer to question 7 you have mentioned that a few moldings were used at Emerson & Fisher's while you were there. State whether or not you put any of those moldings onto dashes.

Ans. Yes, sir. I have been called upon to put a few of them on at times, as it was considered quite a trick or feat to get them on successfully. The opportunity was open to any one who would either volunteer or be requested to try their hand to get them on successfully.

Ques. 12. Examine Defendant's Exhibit "Richmond Sheath" and state whether or not you ever saw such a device or one anything like it, either of soft wood, as is this exhibit, or of hard wood or other material, used at Emerson & Fisher's in putting moldings onto dashes while you were in their employ.

Ans. I never say that nor anything like that in use at Emerson and Fisher's made of any material.

Ques. 13. If a device such as Defendant's Exhibit "Rich-
177 mond Sheath" or anything at all like it, either of soft or hard wood or other material, had been used at Emerson & Fisher's during all of the time you worked for them, or had been in general use by others anywhere in the factory of Emerson & Fisher where such a device would be used or likely to be used during a portion of the time you worked there, would you have known of such use?

(Objected to as incompetent.)

Ans. I certainly would have known of the use of such a sheath had there been anything of the kind in use there.

Ques. 14. And under the circumstances mentioned in the last question would you have known of the device itself as well as of its use?

(Objected to as incompetent.)

Ans. Yes, sir; as it would have been considered something new, and every one there would have known of it just as well as if it had been used.

Ques. 15. What were your opportunities while at Emerson & Fisher's for knowing of the existence of a device such as Defendant's Exhibit "Richmond Sheath" or one at all like it of any material if such had been in use or exposed to view in the factory?

178 Ans. Well, had there been anything of that kind in use it would have come under my direct observation, as it would have been used in my department or my branch of the work. Had it been used at all it would have most likely been used in the finishing room, where I was in and out every day or several times a day, and it would have been considered a new invention, and at that time I paid particular attention to any new discovery of facilitating work. At that time there was very little done in the way of systemitizing work, and anything new being discovered was very noticiable to me, as I took great pride in making every advance in mechanism personally.

Ques. 16. In how many rooms was the trimming and finishing business carried on at Emerson & Fisher's while you were with them, and about how large were these rooms?

Ans. There were two rooms, the trimming room proper, where all the trimming was done, and the wareroom, where the work was hung off and finished. The finishing room is where the work is finally put together. I suppose the trimming room was from

179 75 to 100 feet long and 20 to 25 feet in width and the wareroom about the same size, or possibly larger.

Ques. 17. Please tell us why it was that you were in and out of the finishing room every day or several times a day?

Ans. Because I had to go through the wareroom and finishing room to get to the trimming room to work; also I often had some little work to do in the wareroom on work that I had trimmed.

Ques. 18. State whether or not you ever saw a sheath or device having a groove to receive and support the molding while the molding was being put upon the dash; and, if you did, state when and where you first saw such, and was it of metal or of wood.

(Objected to as leading.)
Question withdrawn.

Ques. 19. State whether or not you ever saw a device or sheath having a groove to receive and support the molding while the molding was being put upon the dash; and, if you did, state when and where you first saw such, and of what material was it made.

Ans. I saw a metal sheath in use by the Columbus Buggy

180 Company in May, 1875. This sheath was made of wrought iron, two bars riveted together, with a groove on the under side, to receive the dash molding. It had a metallic changeable or adjustible stop at one end, so as to adjust it to any length of molding to be used, with an iron hook at the opposite end to attach at belt, with power to force the molding on the dash.

Ques. 20. Whose invention did you understand the device described in your last answer to be?

(This and the last preceding question objected to as incompetent and not in rebuttal.)

Ans. The invention of George M. Peters.

Ques. 21. How successfully did the device referred to in your answer to question 19 operate?

(Same objection.)

Ans. It worked very successfully, always getting the moldings on much tighter and firmer than they could be put on in any other manner, never damaging either dash or molding.

Ques. 22. Did you, after you saw such device at Columbus, ever put moldings onto dashes with a sheath or device similar to
181 that you saw in said buggy Co.'s shop at Columbus; if yea, did you put on many or few moldings with it, and where did you use it?

(Same objection.)

Ans. Yes, sir; I had a sheath made in the fall of 1876 to my order, while in the employ of T. T. Haydock, similar to the one I saw in use by the Columbus Buggy Co. in 1875; I used it to a considerable extent in Mr. Haydock's factory; I really put all the moldings on the dashes that were used with it; from 50 to 75 a week was about what we used at that time.

Ques. 23. About when were you engaged in the business of manufacturing carriage dashes, and where?

(Objected to as irrelevant.)

Ans. I believe it was in 1878 I was engaged in the manufacture of dashes; I was at two different places; at 455 John street and at 414 John street, Cincinnati.

Ques. 24. From your knowledge of putting moldings onto dashes how long, in your opinion, would a device like Defendant's Exhibit Richmond Sheath of hard wood, where the exhibit is of soft wood, stand in ordinary use in putting moldings onto dashes?

182 (Same objection.)

Ans. It might last to put on a half a dozen moldings; it would depend entirely on how tight they went on; I think that I have put moldings on dashes myself that drove on so hard that it would break that stick by the time you got on one molding, and I have not — thought worth while to make a wooden stick for that purpose; I would have used it myself while manufacturing dashes, but knowing that it would not stand the usage I got along without — nor would I have recommended others to make them of metal.

Ques. 25. State how the length of the groove in the sheath that you used and saw compared with the length of the moldings applied to dashes by means of said sheath.

(Same objection.)

Ans. The sheath was long enough to take in the average length of molding and to adjust it to the different lengths of molding, so as to have the end of the molding to project an inch and a half to two inches out of the sheath, so as to see how to guide the molding while drawing on. There was an adjustable metallic stop at one end of the sheath.

183 Ques. 26. Judging from your experience, how long would the metal stop shown in Defendant's Exhibit Richmond Sheath remain in position in said sheath should the latter be in use and the sheath be made of hard wood instead of soft?

(Same objection.)

Ans. It is my candid opinion that if the first molding attempted to be put on with that sheath were to go on as tight as the average molding and by driving it on with a hammer or mallet that the concussion of the molding against the metal stop would batter even the hardest piece of wood so as to make the stop so loose that it would drop out and not remain in position, the sheath being turned with the groove and the stop down. My experience with the metallic sheath causes me more particularly to remember the strain brought upon the stop, as I have had an iron pin fitted in the groove and rivetted and have forced that out by a gradual pressure, which would not be as liable to tear out the stop as by driving on with the hammer or mallet. I found the only method to keep from tearing out this stop was to put in an undercut or dowel-shaped pin

184 across the groove, the same as I saw used in the G. M. Peters sheath.

Ques. 27. Please explain what you mean by "gradual pressure" and the means whereby the pressure was exerted; also state in what shop it was that you had a pin rivetted in the groove of the sheath; also tell us how the dowel-shaped pin was put into the sheath across the groove; also tell us which side of the sheath is uppermost when the sheath is used in applying moldings to dashes.

(Same objection.)

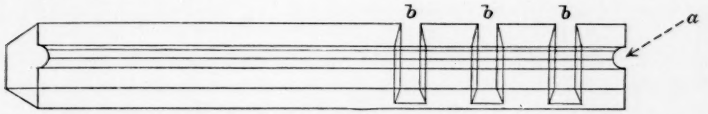
Ans. The pressure was obtained by having a pulley fixed on the end of the clamp or vise which held the dash in position, this pulley having a crank attached and a two-inch heavy leather belt attached to the pulley, the other end attached to the hook on the sheath. By this means the molding was drawn onto the dash. I had the pin rivetted in the sheath that I had made and used at T. T. Haydock's factory. While I had that pin rivetted in the end of the sheath as a stop I had different lengths of round iron pins to drop in the sheath to adjust for the different lengths of moldings. In regard to the dowel-shaped pin there were slots cut across the

185 grooved sheath at intervals of an inch apart, so as to adjust this dowel-shaped pin to the length of molding to be used. The planed or smooth side is uppermost in using the sheath, the groove being downward.

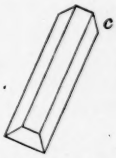
Ques. 28. Please explain more fully the shape of what you call the dowel-shaped pin.

(Same objection.)

—. I will have to make you a drawing—a rude one it will be—to show what I mean.



a represents the groove in sheath;
b, the slot across the grooved sheath; and
c, the dowel-shaped pin, as I called it, or, properly, the dove-tailed shaped pin.



Ques. 29. State whether you have had any experience in the use of sheaths similar to the one you saw in Columbus, in addition to that you have already mentioned; and, if yea, mention where the said sheath or sheaths were used.

(Same objection.)

Ans. Yes, sir; I used a sheath similar to that while in the employ of the Active Dash Co.

186 Ques. 30. State, if you know, who made said sheath and when and how it came to be made.

(Same objection, and for the further reason that it is not in rebuttal.)

Ans. The Active Dash Co. had it made by a machinist, and it was made according to my instructions and similar to the one I saw in use in Columbus. The time was, I believe, along in 1878; I ain't so positive about the time, but I believe it was in 1878 that they went into the dash business; if it was in 1878 it was in the spring of the year.

Quest. 31. How long and how continuously did you continue to use the sheath mentioned in your two preceding answers, and how successfully?

(Same objection.)

Ans. I used it during the time that I was employed by the Active Dash Co. I don't know just how long I was there, but I left in the latter part of June or first of July; I was there three months or a little over. I had it in constant use all the time I was there, and it worked very successfully; in fact, we could not have gotten along without it to any advantage.

187 Ques. 32. When the sheath similar to the one at Columbus was made according to your order for Haydock who were among the first who saw it, and who, if anybody, assisted you in the construction of the sheath or the apparatus, if any, to be used in connection with said sheath in applying moldings to dashes? Also state, if you know, how they regarded it.

(Same objection.)

Ans. Among the first who saw the sheath after being made were Mr. Haydock and the men in the office and the trimmers under my charge in the trimming room; also Mr. Richmond, foreman of the wood department, he having made the clamp, with pulley attachment, for drawing on the molding. It was regarded by all who saw it as a very accurate and new method, to all of them, for putting on molding. There were none of them there that had ever seen anything like it, and all other mechanics from other factories visiting there considered it something indispensible and very useful and a new device to all of them. Mr. Richmond made the clamp and pulley attachment for drawing on the molding according to my directions, he knowing nothing of this, it being a new device to him, as well as to all the rest who saw it.

188 Ques. 33. Please give Mr. Richmond's first name or initials and state, if you recollect, the substance of what, if anything, he said when he first saw or got the description of the sheath referred to in your last answer.

(Same objection.)

Ans. J. T. Richmond. I being intimately acquainted with Mr. Richmond, we constantly coincided with each other in the work connected with the factory. I could not recall the words expressed by him, but know that he was delighted and expressed himself so; that I know that it was entirely new to him..

Ques. 34. State, if you know, whether since 1878 and before the bringing of this suit, January 3rd, 1882, said Richmond knew of the complainant, George M. Peters, of Columbus; and, if yea, state, if you know, what has been Mr. Richmond's feeling towards said Peters, and what, if anything, he said concerning Mr. Peters and the reason for the feelings which he entertained towards said Peters.

(Same objection and, further, as incompetent.)

Ans. He knew of Mr. G. M. Peters, of Columbus, during that time. Mr. Richmond's feelings towards G. M. Peters have been of an unfriendly nature. He has frequently expressed him-

189 self with unpleasant ep*h*ithets towards Mr. Peters. The reason of his feeling towards Mr. Peters was in coming in contact with Mr. Peters in regard to applying for a patent on a dash he claimed that Mr. Peters had interfered with him and kept him from getting a patent. He also said that G. Peters was a scoundrel, and various other ep*h*ithets.

Ques. 35. Referring to your answer to quest. 24, at the close of your answer to that question you say, "nor would I have recommended others to make them of metal." Please explain more fully what you mean us to understand by these words, in connection with the answer to said quest. 24.

(Same objection.)

Ans. From the fact that I knew a wooden stick would not stand the usage, I would make one for my own use while in the dash busi-

ness. What I mean by recommending others to make theirs of metal is that I had used the metal sheath myself at T. T. Haydock's, and also had one made and used it at the Active Manufacturing Co., and going into the dash business after I had used it at both these places, with that experience and practical knowledge of the use
190 thereof, I knew that a wooden sheath would not answer for the purpose nor take the place of the iron sheath for general use.

Ques. 36. In view of the explanation given in your last answer, state whether or not you wish us to understand that when you used the words, " nor would I have recommended others to make them of metal," you mean that you would have recommended others to make them of metal.

(Same objection.)

Ans. Yes, sir; and I did recommend others to make them of metal. What I meant to state there was that if I had known that wood would have answered the purpose I should not have recommended others to make them of metal.

Ques. 37. You have stated that at Emerson & Fisher's dash moldings were used in 1875. State whether or not there might have been one or two or several sample moldings used there in 1874.

Ans. There might possibly have been a few sample moldings used. The moldings at that time were new to the trade, and were little used on account of their being considered too expensive for gen-
191 eral use. Later, as they became better known to the trade and were sold cheaper, they were used extensively by all carriage manufacturies in the city. One great difficulty was in getting them on the dashes. They being expensive and no method of applying them save driving them on with a hammer or mallet, caused them to be broken up, and no one knowing of any device to put them on successfully, it was quite a drawback in introducing the molding for general use.

Ques. 38. Examine Complainant'- " Exhibit Staver Stick " and state how long, judging from your experience, such a device, in and with ordinary use in applying molding to dashes, would remain operative.

(Objected to as irrelevant and incompetent.)

Ans. I doubt very much whether that stick would stand driving on one molding tight without the end of the molding cutting and splitting out the end of the stick. If it did not split out the end of the stick by driving on the first molding, provided it went on very tight, as they generally do, it is my opinion that the molding would imbed itself in the end of the stick, so that the stick could not
192 be removed without removing the molding from the dash again. I consider the mechanical idea of using any such stick for that purpose as very absurd and not endowed with good mechanical judgment.

Ques. 39. State whether or not a mallet, hammer, or club would be necessary in connection with a stick like Complainant's Exhibit

Staver Stick in applying a molding to a dash where the molding meets with the ordinary resistance in going on the dash; and, if yea, what effect would the blows of the hammer, mallet, or club have upon the said stick.

(Same objection.)

Ans. The use of a mallet, hammer, or club would have to be brought in use, with the use of a stick or sheath to drive the molding on the dash, as they all, generally, go on very tight. It would, no doubt, batter and split it up so as to be useless with very little usage. The end battered on would last longer than the end the molding came in contact with.

Ques. 40. Please explain where is the end which the molding comes in contact with.

Ans. At the end of the groove which receives the molding.

193 Quest. 41. You have stated that the adjustibility of the stop in the groove of the sheath was so that the stop could always be adjusted, so that the molding, which was inserted into the groove, would always extend out beyond the advancing end of the sheath. In view of this answer, state whether or not a molding could be successfully applied if the molding did not thus extend out beyond the end of the sheath.

Ans. No, sir; it could not be successfully applied without the end of the molding protruding at the front end of the sheath, where it was started on the dash, it being necessary for it to protrude at the end, so that you can see to guide the molding below the stitching on the top of the dash, that, the stitching, being the principal in holding the molding from coming off after being put on.

Cross-examined by C. M. PECK, Esq., of counsel for respondent:

X Q. 42. In whose employ are you now?

Ans. Wm. Aufderheide & Co.; also John Auel. I contract for their carriage trimming.

X Q. 43. State exactly what were your duties while you were in the employ of Emerson and Fisher?

194 Ans. Trimming top work complete. At the time I commenced work there the work was not systemitized as it is at the present time, so that it was expected of a journeyman carriage trimmer to trim a job complete, consisting of the top and all pertaining to the same—cushion and dash, etc.

X Q. 44. Did your duties require you to place any moldings upon dashes while at Emerson & Fisher's?

Ans. Yes, sir; if required to do so, which was sometimes the case.

X Q. 45. Please state again when you went to work for Emerson & Fisher and when you quit.

Ans. It was either in the latter part of August or the beginning of September, 1874, and I left there about the second week in May, 1875.

X Q. 46. Are you as positive of the other dates which you have given as you are of this?

Ans. I am just as positive in other dates which I have fixed as I am in this.

X Q. 47. Give the names of your fellow-workmen in the
195 same department at Emerson & Fisher's while you were there.

Ans. Journeymen were George Fisher, David Parrish, James Mitchell, Ben. Hill, Hen. Rusche, and myself. That was about all the journeymen at that time, most of them having apprentice boys as helpers. There was still another journeyman that I remember now—Col. Driscoll. Boys and helpers were Fred. Balser, Joe Schoenberger, Patrick Morrisey, John Shane, John Glenn, John Damseifer, Henry Staver, and Jack Scollans. I may have omitted a few of the names of boys who were off and on during that time, but that will cover the majority of them.

X Q. 48. These, then, were all who — employed in the room in which you worked, were they?

Ans. I may have forgotton some of them, having been placed in positions where I have learned so many different men & names that I could not positively state that I have mentioned every single man or boy that was employed there at that time.

X Q. 49. Were John T. Richmond, Henry Staver, and Valentine Flecksteiner employed in the same room with you at Emerson & Fisher'-?

196 Ans. No, sir; they were not. John T. Richmond was employed in the wood department; Henry Staver was employed in the trimming and finishing department; Flecksteiner was a wareroom hand, and not employed in the trimming room.

X Q. 50. Give an account of your time since you left Emerson & Fisher's, the different places where you worked, and how long at each place.

Ans. I went to Columbus, Ohio, after leaving Emerson & Fisher's, on the 15th of May, 1875. I worked for David A. Parrish in Columbus up to the last few days of July, and returned to Cincinnati on the first day of August, 1875; then I went into the carriage business with Thomas Moore and Charles Howard, as a partner, until late in the fall; I think about November; I then went to work for Dierhölder, in Columbia, Cincinnati, and remained with him until close onto the holidays. I then did a little work for W. W. Gildso, on Ninth street. About that time Haydock was making preparations to go into the carriage business, and I being recommended to him was employed as foreman of the trimming department in the early part of February, 1876. I remember moving my machine and tools there on the day of the Robinson Opera House
197 disaster, which was, I believe, on the 9th of February. I remained with Mr. Haydock until along in the first of May, 1877, when I went to Columbus, Ohio, and took charge of the Columbus Buggy Co.'s trimming department. I remained with them until May, 1878, when I returned to Cincinnati and again took charge of Mr. T. T. Haydock's trimming department, as foreman. I remained with him until February, and think it was February, 1879, when I, as a leader, took part in starting the Enterprise Carriage Manufacturing Stock Co. When I left there I commenced to

work for the Active Manufacturing Co., at No. 11 Home street. I don't know positively when this was, but about April, probably earlier; I rather think it was earlier. I remained with them until the latter part of June, when I went into the dash business myself and continued until about February, 1880, when I was employed by George Enger & Co. as superintendent of their factory. In either May or June I left there through the influence of Mr. J. T. Richmond and took charge of Davis & Gould's trimming department, on the corner of Clinton and Denman streets, where Mr. Richmond was also
198 foreman in the wood department. Not *not* being suited there with the changed position, I shortly afterward left there and took charge of Sechler & Co.'s trimming department. I left there July 2nd, 1881, and finished up some work for the assignee of Aufderheide & Co. From there I went to Louis Cook, at John & Betts streets, where I worked for a few months, when I engaged with Mr. John Auel until February, 1882, when I took Wm. Aufderheide & Co.'s trimming work by contract in connection with Mr. Auel's, and am still working for the same parties.

The further taking of these depositions is hereby adjourned until Saturday, January 6th, 1883, at 9 o'clock a. m.

HERMAN MERRELL,
N. P., Acting Sp'l Ex'r.

Met this Saturday, January 6th, 1883, pursuant to adjournment. Present: The same parties.

Cross-examination of James W. McCURLEY resumed:

X Q. 51. Do you mean to say that all the dashes were made and moldings put on them in the room where you worked at Emerson & Fisher's while you were there?

199 Ans. No, sir; I mean to say that all the dashes that were made were made in the room in which I worked. There being few moldings used at that time, those few that were used were generally put on in the wareroom after the dash had been bolted onto the body. Having tried to put them on without being fastened to the body, and finding it difficult to hold the dash, they resorted to fastening the dash on the body.

X Q. 52. Was the wareroom the room in which you worked?

Ans. My principal working room was the trimming room, and I occasionally done odd jobs in the wareroom.

X Q. 53. Then, for all you know, moldings might have been put upon the dashes in the wareroom in a number of different ways without your seeing them so put on?

Ans. There was but one common way of putting them on known to all at that time, and that was to drive them on with a hammer, mallet, or club; and, knowing that they had a great deal of difficulty in getting them on at that time, and hearing complaints of every one who attempted to put them on, besides having
200 tried it myself, had there been any new or mechanical device brought about or been in use to put them on more success-

fully than by driving them on with a hammer or mallet, I should certainly have been one of the first to know of the same or to have seen it used, as at that time I was wide awake and on the alert for any novelty or new device for facilitating work in my branch of the business.

(Answer objected to as irresponsive and the witness to answer the question and confine himself to the fact and not to any opinion which he may have.)

X Q. 53 repeated.

Ans. There was but one way of putting them on at that time, and that was by driving them on with a hammer, mallet, or club.

X Q. 54. Then do you refuse to answer my question?

Ans. I consider that I have answered the question fully; if not so, I will answer any particular point thereof called for which I do not see or understand.

X Q. 53 repeated.

Ans. I don't see how they could have been put on in many
201 different ways, as I had every opportunity of seeing them put on, and had there been any new way of putting them on I would have seen the same, as I was in and out of the wareroom a number of times each and every day.

X Q. 55. Had your duties anything to do with the putting on of dashes or the putting of moldings upon the dashes?

Ans. I had nothing to do with the putting on of dashes; was sometimes called upon to put on the moldings.

X Q. 56. Who called upon you?

Ans. Sometimes the foreman, George Fisher; I don't remember whether there were any others ever asked me to put them on, but think likely that I have been asked by the finisher to assist him in putting them on.

X Q. 57. Wasn't J. W. Fisher superintendent of the trimming department and were you not kept at work at a bench all day in the trimming room?

Ans. J. W. Fisher acted as foreman of the trimming room when I first went to work there, in 1874, such as cutting stock and giving out work to the hands, no- remaining in the room constantly.
202 Not having no regular man at that time to finish up the work in the wareroom, every journeyman trimmer employed there at that time was often called upon to do some work on his own work in the wareroom, which is ever the case to-day in factories where they are supposed to have men to attend to the work in all the different departments. I was to work in the trimming room unless called upon to do some odd work in the wareroom, as I have stated before.

X Q. 58. When were you first approached and by whom with reference to giving your evidence in this case?

Ans. Mr. Kilmer asked me some six weeks ago whether I would be willing to testify in regards to what I knew of the sheath being in use at Emerson & Fisher's while I worked there. I told him I considered it no more than my duty to state what I knew in regard

to the matter, knowing positively that there never had been anything of that kind in use during the time I was there employed.

X Q. 59. Who is Mr. Kilmer?

Ans. Mr. Kilmer is now employed by the branch office of the Peters Dash Co. and Columbus Buggy Co.

203 X Q. 60. What have you received or what has been promised you, if anything, for giving your testimony in this case?

Ans. I have received nothing, but Mr. Kilmer stated to me that whatever time I spent or lost I would be paid for. I told him I asked nothing more, but my time was my capital, and that I could not afford to spend my time without being allowed for it.

X Q. 61. Was any sum fixed or agreed upon which you were to receive; if so, what was it?

Ans. No, sir; there was not; my testimony in the case has not been bought, nor would I sell my testimony in any case. What I say in regard to the matter I simply consider my duty, knowing that the right of the article in question justly belongs to the original inventor, G. M. Peters, it being there that I first saw anything of that kind in use; it was a new idea to me, and I considered it very perfect and useful for the purpose of putting moldings on dashes.

X Q. 62. Why did you leave the employ of T. T. Haydock?

Ans. I first left the employ of T. T. Haydock on account
204 of being charged with dishonesty by a treacherous old scoundrel by the name of Rothart, but shortly after Mr. Haydock, doubted the grounds of the charge, wrote me that my place was ready for me in his factory at any time that I could make it suitable to return, which I did at my earliest convenience.

X Q. 63. When you left Haydock's employ the second time did you leave voluntarily, or were you discharged?

Ans. I left voluntarily, being a stockholder in the "Enterprise." Mr. Haydock was sorely grieved to have me leave him, although I had told him to get another man in my place; that I was going to leave. After an offer of an advance of wages and other conversations had with him he requested me to remain with him, the new man having come to take my place. Mr. Haydock's last words to me before I left the office were, "McCurley, if you would stay with me you would have the best situation here of any man in any carriage shop in Cincinnati."

X Q. 64. Where was the wareroom in Emerson and Fisher's situated, with reference to the trimming room, at the time you were there?

205 Ans. In the building; it was directly under the trimming room; after we moved into the building on John street the wareroom was also under the trimming room.

Re-examined by Mr. Wm. Hubbell Fisher, Esq.:

Q. 65. State, if you recollect, what was the name in 1875 of the company in Columbus where you then saw the device in use which had been invented by George M. Peters for putting on moldings,

and which company is now known as the Columbus Buggy Company.

Ans. It was then known by the name of the Iron Buggy Co.

Q. 66. You say that in 1875 you saw said Peters' device for putting on moldings at Columbus, in the shops of the Columbus Buggy Co., then the Iron Buggy Co., and you say in another answer that you worked for Parrish, in Columbus, in 1875. Please state how you happened to see the said device at Columbus.

Ans. In 1875, during the time I worked there, the firm was known as the Iron Buggy Co. During the fall of the same year the proprietors of the Iron Buggy Co. sold out to a man by the name of Mr. Fuller.

206 Ques. 67. You do not understand my question. I will put it in a different form. State whether or not, while you worked for Parrish, in 1875, he had any business relations with the Iron Buggy Co.? If so, state in general and briefly what they were.

(Objected to as utterly irrelevant and not in re-examination.)

Ans. Yes, sir; he had their trimming department by the contract, and I was employed directly by him.

Ques. 68. In some of your answer you have mentioned the Active Dash Co. and in others the Active Manufacturing Co. Do you wish to be understood as referring to two different companies?

Ans. No, sir; the same concern.

J. W. McCURLEY.

207 *Depositions of George Huber.*

And GEORGE HUBER, a witness produced on behalf of complainant, being first duly sworn, deposes and says, in answer to interrogatories to him propounded by WM. H. FISHER, Esq., counsel for complainant, as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is George Huber; age, 27 years; residence, Camp Washington, near Cincinnati; occupation has been dash fitting and trimmer; I am a teamster now.

Ques. 2. What were you doing in 1875, and where were you working?

Ans. I was stitching dashes in 1875 at Emerson & Fisher's, Cincinnati, Ohio.

Ques. 3. When did you begin to work for Emerson & Fisher, and about when did you leave their employ?

Ans. I began there some time in April, 1875, and left there in 1879.

Ques. 4. During the time you were at Emerson & Fisher's at what branch of the business did you work?

Ans. At dash stitching.

208 Ques. 5. State whether or not the dashes you stitched were made of an iron frame, covered with leather.

Ans. Yes, sir; they were made of an iron frame, covered with leather.

Ques. 6. In what style or mode were the top edges or top portions of the dashes usually made while you were there?

Ans. They were stitched on the top and then bound.

Ques. 7. Were any moldings like that shown in Complainant's Exhibit "Dash Molding" put onto the top edge of dashes at Emerson & Fisher's while you were there?

Ans. There were some few.

Ques. 8. In what way were these moldings put onto the dashes, and what means were used to put them on?

Ans. They were put on either by a mallet or a hammer.

Ques. 9. Please describe how the molding was put onto the dash—by means of the mallet or hammer.

Ans. The dash was put onto the body, bolted down, and then the molding put on by hand. They put the dash down on the
209 body and then used the hammer to drive the molding on.

Ques. 10. Examine Defendant's Exhibit "Richmond Sheath" and state whether or not you ever saw such a device or one anything like it, either of soft wood, as this exhibit is, or hard wood, used in putting moldings onto dashes at Emerson & Fisher's while you were there?

Ans. I did not, either of hard or soft wood or any kind.

Ques. 11. Examine Complainant's Exhibit "Staver Stick" and state whether or not you ever saw such a device or one anything like it used in putting moldings onto dashes at Emerson & Fisher's while you were there?

Ans. No, sir; I never seen none before until I seen this one.

Ques. 12. If a device such as Defendant's Exhibit "Richmond Sheath" or Complainant's Exhibit "Staver Stick" or anything at all like either of them had been used at Emerson & Fisher's during the time you worked there, or been in general use by others anywhere in the factory of Emerson & Fisher where such a de-
210 vice would be likely to be used during a portion of the time you worked there, would you have known of it?

Ans. If there had been any such a stick as this in the factory I should have known of it and used it myself.

Ques. 13. State whether or not you applied some of these moldings to dashes while at Emerson & Fisher's?

Ans. I have put some of them on; yes, sir.

Ques. 14. What were your opportunities while at Emerson & Fisher's for knowing of the existence of such a device as Exhibit "Richmond Sheath or Staver Stick," or one like either of them, if the same had been in use or exposed to view in their factory?

Ans. Well, sir, I think that if there had been anything of the kind there I would have seen them or used them myself, or heard some talk about them.

Ques. 15. In putting these moldings onto dashes how tight did they go on? In other words, did the molding slip easily and loosely on the dash or was force required to drive it onto the dash?

211 Ans. That depended upon the kind of leather; sometimes, when the leather was thick, they would have to force them

on, and by the time they got them half way on they would bend them.

Ques. 16. Judging from your experience, how long would a device such as Complainant's Exhibit "Staver Stick," when employed in and with ordinary use in putting moldings onto dashes, stand before wearing out or becoming unfit for use?

(Objected to as incompetent.)

Ans. I don't think it would stand very long; they may have put on three or four moldings or may have put on a dozen. I think it would either batter up or split out.

Ques. 17. And how long would the metal stop shown in Defendant's Exhibit "Richmond Sheath" remain in place in said sheath should the sheath be used for putting moldings onto dashes and the sheath be made of hard *would* instead of soft and of a suitable length and of a size substantially like that of "Staver stick."

(Same objection.)

Ans. I should think it wouldn't last very long, because it would either burst it up at the end or knock the stop out; of hard wood, they would split it up.

212 Cross-examined by C. M. PECK, Esq.:

X Q. 18. In what room in the factory of Emerson & Fisher did you work; what is the name of the room and what was done in that room?

Ans. It was in the northeast corner of the building and was called the trimming department; nothing but trimming work and dash stitching was done there.

X Q. 19. Then I understand you that moldings were not put onto the dashes in that room; is that correct?

Ans. Well, sir, there were very few moldings put on there; they were mostly put on down-stairs in the wareroom.

X Q. 20. And for all you know those that were put on down-stairs in the wareroom might have been put on in half a dozen different ways, might they not?

Ans. No, sir; they had been put on only in one way, and that is with a mallet or hammer.

X Q. 21. How do you know what was done in the wareroom when you were not present?

213 Ans. I do know that they were put on that way, as they did not have any way to put them on but with a mallet or hammer.

X Q. 22. Are you aware that Mr. Emerson and Mr. Fisher, Mr. Staver, Mr. Fleckstein, and Mr. Richmond have each and all sworn that they had used or seen used a device like Defendant's Exhibit "Richmond Sheath," in 1874 and 1875, at Emerson & Fisher's shop for putting moldings on dashes?

Ans. No, sir; I am not.

X Q. 23. I now tell you that all of these people that I mentioned in my last question have sworn that such a device as the Richmond

sheath was used in Emerson & Fisher's shop in 1874 and 1875; are you then prepared to swear that such a device was not used or merely that if it was used you did not know anything of it?

Ans. I never seen nor never heard anything of the kind of that machine being in there, and if there was I would have surely seen it or heard of it.

X Q. 24. Your testimony, then, is based entirely upon the fact that you never saw or heard of such a machine; is that the fact?

Ans. I never saw or heard of such a machine.

214 Redirect examination by WM. HUBBELL FISHER:

Q. 25. While working for Emerson & Fisher how often were you down-stairs in the wareroom?

Ans. I would be down there 3, 4, 5, & 6 times a day, and just as often as they would call me down.

Q. 26. What, if anything, would you do there?

Ans. They have had all their dashes numbered. I would go down there and get the numbers of the dashes.

Q. 27. Please explain what you mean by getting the numbers of the dashes and what it was you had to do in getting those numbers or why did you get them.

Ans. I had to go down to get the numbers of the dashes to get the right dash for each buggy.

Q. 28. And what, if anything, did you have to do with those dashes after you got the right number of dash?

Ans. I would get the man to take them down-stairs into the wareroom and put them on the body, and sometimes help put on the molding for a first-class job—that is, what they called a first-class job.

215 Q. 29. If a device like Exhibit "Richmond Sheath" or like Exhibit "Staver Stick," or at all like either of them, of soft or hard wood had been used in the wareroom of Emerson & Fisher in putting moldings onto dashes are you positive that you would have known of it?

(Objected to as incompetent and as needless repetition.)

Ans. Yes, sir; I would, for I would have either seen or heard of it.

Q. 30. And if any of the devices mentioned in my last question had been in general use in the factory of Emerson & Fisher would you have had a hand in the use of the same?

(Same objection.)

Ans. I would have if there had been anything there of that kind.

GEORGE HUBER.

216 And JOHN N. DORNSEIFER, being first duly sworn, deposes and says, in answer to interrogatories to him propounded by WM. HUBBELL FISHER, Esq., counsel for complainant, as follows, to wit:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is John N. Dornseifer; age, 25 years; residence, South Cumminsville, Cincinnati; occupation, carriage trimmer; I am now working for Enger & Co.

Ques. 2. State whether or not you ever worked for Emerson & Fisher, carriage manufacturers, Cincinnati, Ohio, and, if you did, when did you begin to work for them; did you work continuously for them after you began to work, and when did you leave their employ, and at what branch of the business did you work while in their employ?

Ans. I began working for Emerson & Fisher March 29th, 1875, in the trimming department, and left there in the latter part of 1879. I worked continuously for them during that time.

Ques. 3. Did Emerson & Fisher while you worked for them make leather-covered dashes; and, if they did, in what department were such dashes made, and in what style or mode were the top
217 edges or top portions of the dashes usually made, during the time you were there?

Ans. Emerson & Fisher made leather-covered dashes for two years or more after I came there, and some of the dashes were bound with black enameled leather, and the extra dashes were finished with molding on the top edge.

Ques. 4. Please state what you mean by extra dashes, and whether these extra dashes were many or few, as compared with the other dashes made.

Ans. The extra dashes were what were called first-class jobs, and there were but very few used.

Ques. 5. And how were the top portions or edges of the greater number of dashes made by Emerson & Fisher finished?

Ans. The top edge was stitched about two stitches to the inch with a piece of enameled leather stitched on by hand.

Ques. 6. In what room or department were the moldings usually put onto the dashes?

Ans. The most of the moldings were put on in the wareroom; some few were put on in the trimming department.

Ques. 7. How and by what means were the moldings put onto the dashes?

218 Ans. The moldings on the dashes were all put on by a hammer or club in the time I worked there. They used to take and start the molding onto the dash by their hands and drive it on with a club.

Ques. 8. Did they strike the end of the molding with the hammer or club?

Ans. They struck the end of the molding with the club or hammer.

Ques. 9. Examine Defendant's Exhibit "Richmond Sheath" and

say whether or not you ever saw such a device or one anything like it, either of soft wood or hard wood, or heavier or longer, than said exhibit used at Emerson & Fisher's for putting moldings onto dashes while you were there.

Ans. I never saw such a stick or any other kind of a machine so long as I worked at Emerson & Fisher's for the use of putting moldings onto dashes.

Ques. 10. While at Emerson & Fisher's did you ever put any moldings onto dashes?

Ans. I put a few moldings on dashes while working at Emerson & Fisher's.

219 Ques. 11. Did you see others put moldings onto dashes at Emerson & Fisher's while you were there?

Ans. I have see- Bill Fisher and George Huber put moldings onto dashes while I was at Emerson & Fisher's.

Ques. 12. Did you have occasion to go to the wareroom at Emerson & Fisher's while in their employ; and, if so, how often were you in said wareroom?

Ans. I used to pass through Emerson & Fisher's wareroom four to five times a day in coming to the shop and going to my dinner and going home.

Ques. 13. Did you ever have occasion to go to said wareroom for any other purpose?

Ans. I would sometimes go down there in taking down my cushions and curtains for my jobs and get stock for the trimming department.

Ques. 14. If a device substantially like Complainants' Exhibit "Staver Stick," or a hard-wood stick of suitable length, having a groove in one side of it and a stop in the groove near one end of the stick, had been used in applying moldings to dashes at Emerson & Fisher's in their trimming room or wareroom would you have known of it?

(Objected to as incompetent.)

Ans. If there should have been any such stick as this in the
220 wareroom or trimming room I should have seen it. I would have tried to put a molding on a dash with it..

Ques. 15. In putting the moldings onto dashes did the molding go easily onto the leather of the dash or tightly, and how much force was required to put the molding onto the dash?

Ans. In putting on the molding on the dashes they would sometimes bend them, so that they would have to use a new molding. In putting on the molding on the dash they would sometimes cut the dash leather, and used a good deal of strength in putting them on.

Ques. 16. Then am I to understand from your last answer that the molding, as a rule, went tightly onto the dash, and that it required considerable force to push it onto the dash?

(Objected to as leading.)

Ans. Yes, sir.

Ques. 17. From your experience, if a device like Complainant's Exhibit "Staver Stick" were used in putting moldings onto dashes how long would such a device stand?

(Objected to as incompetent.)

Ans. A stick of this kind would last just about long enough to put on one molding on a dash.

221 Ques. 18. And if a hard-wood stick having a groove in it of the size of the groove in Defendant's Exhibit "Richmond Sheath," the stick being of suitable length and the groove of said stick being provided near one end with a metal stop in the groove, were used in putting moldings onto dashes how long would the stop remain in position?

(Same objection.)

Ans. It would just last about time enough to put one molding onto the dash.

Cross-examined by C. M. PECK, Esq.:

X Q. 19. Do you know that Mr. Emerson, Mr. Fisher, Mr. Richmond, Mr. Staver, and Mr. Fleckstein have, each and all of them, sworn that a device like Exhibit "Richmond Sheath" was used at Emerson & Fisher's shop in 1874 and 1875 for putting moldings onto dashes?

Ans. I do not know anything about 1874. I do not know that Mr. Emerson and Mr. Fisher and the rest of the witnesses have sworn that such was used.

X Q. 20. I now tell you that they did swear that a device like "Richmond sheath" was used, and ask you whether you are

222 prepared to swear positively that such a device was not used, or whether you can merely swear that if such a device was used you did not know anything about it.

Ans. I am positive that if there had been any such stick as "Richmond sheath" there I would have seen it and tried to use it in the year 1875, from March 29th up to the time I left.

X Q. 21. You would not accuse these gentlemen of having sworn falsely, would you?

Ans. I do not know what was used in the year 1874, but I am sure there was no such thing used in 1875 and up to the time I left.

Re-examined:

Q. 22. Emerson, Fisher, Richmond, Staver, and Fleckstein have testified that a hard-wood stick constructed like Defendant's Exhibit "Richmond Sheath" was used publicly in putting the moldings on dashes at Emerson & Fisher's during a part of the year 1874 and during the year 1875; and part of these witnesses have testified that the said device was used at said shop for said purpose during the years 1876 and 1877—that is to say, for three years and over, beginning with some time in the year 1874. State whether or not they are mistaken.

(Objected to as incompetent.)

223 Ans. If there would have been any such stick as "Richmond sheath" from the time of 1875 to 1880 I would have seen it and tried to use the machine myself for putting moldings on dashes.

Ques. 23. Then I understand you to say that they are mistaken as to the use of such a device during the time that you were there. Is that correct?

(Same objection.)

Ans. Yes, sir.

JOHN N. DORNSEIFER.

The further taking of these depositions is hereby adjourned until Monday, January 8th, 1883, at 9.30 o'clock a. m.

HERMAN MERRELL,
Notary Public, Acting Special Examiner.

Met this Monday, January 8th, pursuant to adjournment.

Present: Wm. H. Fisher, Esq., for complainant, and Charles E. Brown, Esq., for respondents.

Deposition of Joseph N. O. Grear.

And JOSEPH N. O. GREAR, a witness produced on behalf of complainants, being first duly sworn, deposes and says, in answer to interrogatories to him propounded by counsel for complainants, *deposes and says* as follows, to wit:

224 Ques. 1. State your name, age, residence, and occupation.

Ans. My name is Joseph N. O. Grear; age, 25 years; residence, Winton Place, Hamilton county, Ohio; occupation, hotel keeper; I keep the Turf Exchange at Winton Place.

Ques. 2. State whether or not you ever worked for Emerson & Fisher, carriage manufacturers, Cincinnati, Ohio; and, if you did, state when you began to work for them, when you left their employ, whether you worked continuously for them from the time you entered their employ until you left it; also state at what branch of the business you worked at Emerson & Fisher's, and in what department of their factory such branch of the business was carried on.

Ans. I did work there; I started there in the first of the year 1875, and left there in the summer of 1878. I worked continuously for them between those dates. I worked in the trimming department as a carriage trimmer.

Ques. 3. State whether or not Emerson & Fisher at the time you worked for them made leather-covered dashes; and, if they did, tell us in what department of their factory such dashes were made.

Ans. They did make them while I worked there. The iron-work was made in the blacksmith shop, but we covered them in
225 the trimming shop. I have covered many of them myself.

Ques. 4. In what style or mode were the top edges or top portions of these dashes usually constructed?

Ans. They were stitched all around, and some of them finished at the top for the use of moldings and others blackened and finished without the moldings. When I first went there they did not use any moldings that I know of. In the latter part of the time the most of them were finished with moldings.

Ques. 5. State in what way and by what means the moldings were applied to the dashes while you were at Emerson & Fisher's.

Ans. They were driven on with either a mallet or a stick heavy enough to use.

Ques. 6. Please describe how you used the stick; also give the form or shape of it.

Ans. We started the molding on the top of the dash and struck it on the end with the stick and drove it on.

Ques. 7. State how well acquainted you were with what was done in the trimming department.

Ans. I was pretty well acquainted with it all there. I went
226 around just as I pleased. I was independent about working, and if I wanted to go anywhere in the factory I went.

Ques. 8. State where at Emerson & Fisher's the moldings were generally put onto the dashes.

Ans. They were generally put on in the finishing room.

Ques. 9. Was the finishing room ever known by any other name? Also state what they did in the finishing room.

Ans. Some of them might call it the wareroom; the work was all hung off and finished there to ship.

Ques. 10. How well acquainted were you with what was done in the wareroom.

Ans. I have often been in the wareroom and have done as much as to help finish off work.

Ques. 11. How often were you in and out of the wareroom?

Ans. I went through it every time I went to work, and often went down there and talked to the boys while they were finishing off work, and stood around there.

227 Ques. 12. State whether or not, while you worked at Emerson and Fisher's, you ever saw or knew of a device like Defendant's Exhibit "Richmond Sheath" or anything like it, either of soft wood or hard wood, long or short, used there in putting moldings onto dashes.

Ans. While I worked there I never saw anything used to put them on except, as I told you, a mallet or stick.

Q. 13. If a device such as mentioned in my last question or like Complainant's Exhibit "Staver Stick" had been used at Emerson & Fisher's in putting moldings onto dashes, either in the trimming room or finishing room, or anywhere where in such a factory they would be likely to put moldings onto dashes, would you have known of it?

Ans. I should certainly have seen it, as any new improvement I was anxious to see, anyhow, and if it had been there I should have seen it.

Q. 14. Judging from your experience, if a device like Defendant's Exhibit "Richmond Sheath" were used in putting on moldings,

supposing the sheath to have been of hard wood and of proper length, how long would such a sheath last?

(Objected to as incompetent.)

228 Ans. It might last to put on two or three moldings, but it would not last a day.

Ques. 15. And how long would a sheath such as Complainant's Exhibit "Staver Stick" last if used in putting molding onto dashes?

(Same objection.)

Ans. It would last about the same time as the other.

Complainant here offers in evidence the device marked "Complainant's Exhibit Staver Stick."

HERMAN MERRELL,
N. P., Acting Sp'l Ex'r.

Cross-examined by C. E. BROWN, Esq.:

X Q. 16. Examine Defendant's Exhibit "Richmond Sheath" and state whether or not you ever saw such a device or one anything like it, either of soft wood, as it this exhibit, or of hard wood or other material, used at Emerson & Fisher's in putting moldings onto dashes while you were in their employ.

Ans. I never seen anything like this used there of wood or any other material.

X Q. 17. If a device such as Defendant's Exhibit "Richmond Sheath" or anything at all like it, either of soft or hard wood or other material, had been used at Emerson & Fisher's during
229 all the time you worked for them, or had been in general use by others anywhere in the factory of Emerson & Fisher where such a device would be used or be likely to be used during a portion of the time you worked there, would you have known of such use?

Ans. If anything had been used like Defendant's Exhibit "Richmond Sheath" I should certainly have seen it, as I have been about the wareroom frequently and done as much as finish off work there.

X Q. 18. In what room in the factory of Emerson & Fisher did you work; what was done in that room?

Ans. I worked in the trimming room. In the old factory the trimming room was in the front part of the second floor, and in the new factory we had half of the second floor. We trimmed buggies and carriages and covered dashes up there.

X Q. 19. Do I understand you that moldings were or were not put onto the dashes in these rooms?

Ans. They were not put on in the trimming room as a general thing. I have seen one or two put on there, but as a general thing they were put on in the finishing room.

230 X Q. 20. Where was the finishing room located in these buildings—on the same floor as the trimming room?

Ans. They were not located on the same floor. They were always on the first floor.

X Q. 21. For all you know these put on down-stairs in the ware-room or finishing room might as well have been put on in half a dozen different ways, might they not?

Ans. I hardly think they could, as there wasn't, generally, time enough to experiment in any other way.

X Q. 22. How do you know what was done in the finishing room when you were not present? Might they not have been put on in other ways without your knowledge?

Ans. I think, if they would have put them on in any other way and had such an easy plan as this "Richmond sheath," the boys would surely have shown it to me, as I was very frequently in the finishing room and always on good terms with all the boys, and they would surely have shown it me, as I would often finish up and stop and help them.

X Q. 23. Who worked with you in the trimming depart-
231 ment during the time you were employed by Emerson & Fisher?

Ans. James McCurley, James Duncan, George Fisher, John Scollins, Pat. Morrisey, John Glenn, Fred. Balsing (I think his name was), Hen. Staver, George Huber. That is about as many as I can remember, except the last man who worked alongside of me; his name is Austin Sweet; there were also John Dornseifer, Jos. Schoenberger, and Henry Rusche.

X Q. 24. Are you aware that Mr. Emerson, Mr. Fisher, Mr. Staver, Mr. Fleckstein, and Mr. Richmond have each and all sworn that they have used or seen used a device like Defendant's Exhibit "Richmond Sheath" in 1874 and 1875 at Emerson & Fisher's shops for putting moldings on dashes?

Ans. No; I am not aware that they have testified that; I know that if they had seen them put on so they must have seen it after working hours, as I was in the factory as much as anybody.

X Q. 25. I now tell you that all of these people that I have mentioned in my last question have sworn that such a device as the "Richmond sheath" was used in Emerson & Fisher's shops
232 in 1874 and 1875; are you, then, prepared to swear that such a device was not used, or merely that, if it was used, you did not know anything of it?

Ans. I am prepared to swear that I don't know anything about it; if it was used, that I did not see it.

X Q. 26. Don't you, then, think that such a device as the Defendant's Exhibit Richmond Sheath could have been used in a different room and department of the factory of Emerson & Fisher from the one in which you worked without your knowledge?

Ans. I- could not to any extent.

X Q. 27. Is or is not your testimony, then, based entirely upon the fact that you never saw or heard of such a machine? Is that the fact?

Ans. Yes.

X Q. 28. How much time did you loose in the year 1875 while working for Emerson & Fisher, or about how much, as near as you can state?

Ans. I might have lost two days in that time, but I hardly think I lost that.

233 X Q. 29. Will you more particularly describe the mallet or heavy stick by which the moldings were applied to the dashes while you were at Emerson & Fisher's?

Ans. The mallet was a small mallet, such as we generally used in a carriage factory. It was a small square piece of hard wood, about three inches square, with a handle in it as long as any one wanted it—according to each one's fancy. The stick was about a foot long, such as was used generally in driving hub bands onto buggies.

X Q. 30. Were John T. Richmond, Henry Staver, and Valentine Fleckstein employed in the same room with you while you were at Emerson & Fisher's?

Ans. Richmond and Fleckstein were not; Staver was. Staver generally done the finishing when I was there.

X Q. 31. Do you know in what department Richmond and Fleckstein were employed?

Ans. Yes, sir. Fleckstein was down in the finishing room; John Richmond was foreman of the wood-working department.

234 X Q. 32. In what particular branch of the trimming department were you engaged while at Emerson and Fisher's, and were you engaged in that particular branch of the department all of the year of 1875, and was Mr. Staver employed in the same branch of that department in the year of 1875?

Ans. In the first year I was helping another man trimming carriages and buggies. We used to trim a whole buggy or carriage then. We took a job and trimmed it all through. Mr. Staver was employed in the trimming shop, but he used to finish the work off down-stairs in the wareroom, or finishing room during that year.

X Q. 33. In what department down-stairs did Mr. Staver finish off his trimming of buggies?

Ans. In the finishing room, where they hung off the work.

X Q. 34. Did your duties require you to place any moldings upon dashes while at Emerson & Fisher's during the year 1875?

Ans. Not necessarily; but in case of a rush I used to be sent down to help finish them up, and I, of course, would sometimes have to put on moldings on dashes.

235 X Q. 35. State about how often, as nearly as you can, you were sent down-stairs to put moldings on dashes during the year 1875.

Ans. I don't know that I was sent down at any time on purpose to put on moldings. I was sent down to finish off, and if the molding was to be put on I would put it on. I cannot tell how many times exactly.

X Q. 36. Give an account of your time since you left Emerson & Fisher, and how long you worked at each place, as near as you can.

Ans. I have worked nowhere but at Davis & Gould's permanently. I went to Louis Cook's once to trim some work for him to take to California. As soon as I was done I went back to Davis & Gould's.

X Q. 37. When did you begin work at Davis & Gould's, and when

did you quit there, and how long during that time were you at Louis Cook's, and what have you been doing since?

Ans. I went to work at Davis & Gould's in 1878. I left there just after McCurley took charge of the shop. I don't know just when that was; it was either in 1880 or 1881. I was at Cook's during that time for about three weeks. Since I left Davis & Gould's I have been keeping the Turf Exchange at Winton Place.

236 —. Had you ever worked at the manufacturing of buggies, in the trimming department or otherwise, before going to Emerson & Fisher's in 1875; and if so, when and where?

Ans. I had. I worked at Albrecht & Nieman's, corner of John and Everett streets; first as clerk in the wareroom, then I went to work at my trade of carriage trimming.

X Q. 39. Do you mean to say that all the dashes were made and moldings put on them in the room where you worked, at Emerson & Fisher's in the year 1875?

(Objected to, as this witness has distinctly said that part of the moldings were put on in the trimming room and part in the finishing room.)

Ans. I did not say so. I said there were several put on there, but as a general thing they were put on in the finishing room.

X Q. 40. Did I understand you to say that your duties had anything to do with the putting on of dashes or the putting of moldings on the dashes?

Ans. Not necessarily so; only as directed by the foreman.

X Q. 41. Who was the foreman while you were there?

237 Ans. At first John Fisher himself acted as foreman. When he found he could not attend to it and his other business he put his brother in as foreman.

X Q. 42. Did Emerson & Fisher make all the dashes they used in the year 1875, while you were in their employ?

Ans. To the best of my knowledge, I would say they did. I don't know any different.

X Q. 43. You say in your answer to ques. 4 of this examination that when you first went there they did not use any moldings that you know of. The latter part of the time the most of them were finished with moldings. Do you mean by this answer that they used no moldings in the year 1875; and, if so, upon what do you base your knowledge?

Ans. I base my knowledge upon the fact that if there had been any used I would have seen them. To the best of my knowledge, I never seen any moldings used in the year 1875.

X Q. 44. How much of your time did you devote to the work for which you was employed by Emerson & Fisher?

238 Ans. I worked there and done what work I had to do, and that is all I know about it.

X Q. 45. Was it the way Emerson & Fisher managed their labor, in letting their hands leave their particular work they had to perform and go about the establishment independently as they pleased?

Ans. I don't suppose Emerson & Fisher would have allowed it if they could have prevented, but I went whether they wanted or not. I did not have to work and would not work for any man unless I could go around if I pleased. I did not propose to be pinned down to a bench and stay there. Emerson has called me away from the bench himself, and Fisher, both.

X Q. 46. On the other hand, were they not strict in their discipline, requiring their employees to remain at their posts during working hours, so that men in the trimming department were not permitted, unless sent, to go into the other departments of the shop?

Ans. They never were that strict with me, I know; and I never knew of any rules of that kind—to make a man stay right where he was working.

239 X Q. 47. In large manufacturing establishments of this line of goods are not men usually employed to stay in the department in which they work, or are they permitted to go promiscuously from one department to another without request?

Ans. I never worked with a firm of that kind where if I wanted to see anybody in another department I could not just go and see them.

X Q. 48. As far as you know, was this the case with the other employees of Emerson & Fisher while you worked for them?

Ans. As far as I know, they all done the same if they wanted to. If they wanted to go anywhere I guess they went. I did not know about every one in the factory. I know what I done, and don't care whether the others did so or not.

X Q. 49. Do I understand you, then, that there was little system in the manufactory of Emerson & Fisher in keeping their men in the particular departments in which they were employed?

(Objected to as irrelevant and incompetent.)

Ans. Every man was supposed to do so much work, and if he wasn't awful slow he could get a little time to go around when he wanted to. We were working by the day, and a man
240 wasn't going to kill himself working by the day for them. I know I wasn't.

X Q. 50. Then I understand you that so a man did a certain amount of work sufficient to be considered a day's labor he was permitted to go through and about all the other departments of the manufactory?

Ans. A man wasn't supposed to do his work in a certain time and then go around. He could take his time and work easy and when six o'clock came go home.

X Q. 51. How many buggies did Emerson & Fisher ship per day in 1875?

(Objected to as irrelevant and incompetent.)

Ans. That was out of my line of business. The best way to find out is to go to see Emerson & Fisher's books for that year.

X Q. 52. Well, about how many buggies should you judge that they shipped per day in 1875?

Ans. I never kept any run and couldn't judge whether they shipped any or not, as I don't know.

X Q. 53. What kind of buggies did Emerson & Fisher
241 make while you were working for them in 1875 upon which they used moldings on the dashes?

Ans. They made a second-grade work, a little better than they are making now, I guess.

X Q. 54. What style of buggies, as to boxes, seats, &c., and how were they trimmed—with leather or cloth?

(Objected to as irrelevant and incompetent.)

Ans. They made all styles, the same as they do now. They trimmed them with both leather and cloth.

X Q. 55. What kind of leather was used for cushions and backs, and what colored cloth?

(Same objection.)

Ans. Black and brown leather and imitation morocco; mostly brown and blue cloth.

X Q. 56. Did they use wood or steel bow sockets?

(Same objection.)

Ans. I never seen wooden bow sockets; I have seen wooden bows, but not sockets; they used steel sockets.

X Q. 57. Was the whip-socket used metal or wood?

(Same objection.)

Ans. If I could see some of those old buggies I could tell you; I cannot now; I paid no attention to the whip-sockets.

242 X Q. 58. What kind of plating was used on the shafts' tips and other mountings?

(Same objection.)

Ans. I am no plater and don't know how they plated them or nothing about them.

X Q. 59. Did Emerson & Fisher have men especially employed to put the parts of their carriages and buggies together?

(Same objection.)

Ans. They had men employed to do that, and often called on other men from other departments to help them out.

X Q. 60. Were you employed to do this part of the work in 1875?

(Objected to as already answered.)

Ans. No, sir; not necessarily. I was called on to help do it often.

X Q. 61. How long a time were you thus employed in putting buggies together?

Ans. I have worked all day at different times at it. I would sometimes come to the factory and work all day at it.

X Q. 62. Did Emerson & Fisher have their labor in the different

departments systemitized? Did they have specific portions of
243 the work assigned to their employees in the different departments of their factory?

Ans. Could not tell what the foremen of other departments gave their hands to do, but in the trimming department we took a job and trimmed it through ready for the finishing room while I was there.

X Q. 63. Did you have any business in the wareroom during working hours except to pass through to your work upstairs in the trimming room?

(Objected to as already answered.)

Ans. Yes, sir; I was often called down there to finish off the work.

X Q. 64. Well, then, can you, from the knowledge you gained by going down into the finishing room occasionally, upon your oath say that the Defendant's Exhibit Richmond Sheath could not have been used in Emerson & Fisher's manufactory in the year 1875 without your knowledge of such use?

Ans. I can swear before any court that that thing could never have been used in the factory without my having knowledge of it.

X Q. 65. Was J. H. Halliday connected with Emerson & Fisher in 1875; and, if so, what part of the time and where was he engaged?

244 Ans. Mr. Halliday was connected with the firm before I left there, but I could not tell whether he was in 1875 or not. He was always in the office and kept the books, I believe. I never saw him out of the office doing anything else.

X Q. 66. Do you know when his connection with the firm was severed, and why did he leave them?

(Objected to as immaterial and incompetent.)

Ans. I know he was a partner in the firm and I know he did; I could not tell when.

X Q. 67. While you were employed there in the years 1874 and 1875 did Emerson & Fisher use any other kind of mounting on top edge of dashes than what is known as the Peel & Elster molding?

Ans. None that I know of—I mean no other kind of molding.

X Q. 68. Did they not use a raised rail during 1875?

Ans. On several buggies and carriages they used the raised rail.

X Q. 69. Can you describe what this raised rail was?

(Objected to as immaterial and incompetent, and the complainant, through his counsel, hereby notifies the defendant and
245 his counsel that he hereby objects to and protests against this cross-examination as thus far conducted as to its manner and needless length, and as being irrelevant, incompetent, and as causing an unnecessary waste of time and an unnecessary expense in this case, and he further notifies the defendant and his counsel that he will move the court to charge the costs of this examination upon the defendant.)

(Defendant's counsel denies that this cross-examination is immaterial or incompetent, but, doubting the correctness of the positive dates given by the witness, desires by this examination to test the memory of the witness as to the said positive statements as to the aforesaid dates by examining him upon the particular circumstances surrounding them.)

Ans. It is an extra rail attached to the side bars of the dash and extending across the top above the dash about an inch from the top of the dash.

X Q. 70. When did they cease to use the raised rail?

(Objected to as incompetent & immaterial.)

Ans. They use them yet, I suppose. They mostly use the molding on the top of the dash now.

X Q. 71. During the years 1874 and 1875 did Emerson &
246 Fisher ship buggies with the dash laid in the box of the buggy to be attached afterward?

(Objected to as irrelevant and as incompetent and as an attempt to make the witness say that he was at Emerson & Fisher's in 1874, when he testifies that he came there in the first part of 1875. Certain other questions, as, for example, X ques. 67, objected to on the same grounds.)

(Defendant's counsel by mistake included 1874 in the above questions and hereby withdraws the part of said questions which relates to 1874, asking only what occurred in 1875, and also includes all other questions in which such mistake was made.)

Ans. I don't know whether they laid them in the body or not when they shipped them. I was not about where they shipped them. I know they were fastened onto the buggies when finished in the wareroom.)

X Q. 72. During the year 1875 did they buy any dashes; if so, from whom and how were they made, and did they have separate feet?

(The last clause of question objected to.)

Ans. They did not buy any, to my knowledge.

247 X Q. 73. What kind of springs did Emerson & Fisher use during the year 1875 in the manufacture of their buggies? State the different kinds.

(Same objection as to 71st X ques.)

Ans. I know the elliptic springs were used; that is the only — I know of, and I don't know whose make, either.

X Q. 73½. Did they use the Brewster spring; and, if so, how many per day, to your knowledge?

(Objected to as above.)

Ans. I don't know whether they used any or not.

X Q. 74. During the year 1875 did Emerson & Fisher use any ornaments or stripes on the gears and bodies of buggies manufactured by them?

(Same objection.)

Ans. They used to stripe the gearing considerable and put some stripes on the bodies. I don't know how many ornaments they used.

X Q. 75. What kind of ornaments did they use on the sides of the buggy box, opposite the seat, and were these ornaments transfer ornaments, or were they painted upon the buggy box direct?

(Same objection.)

Ans. I have noticed monograms on the sides of the bodies. I don't know whether they were painted on or transferred. I
248 never was in the paint shop long enough to find out.

X Q. 76. Was there a fire in the factory in 1875 or at any other time while you were working with Emerson & Fisher; &, if so, when?

Ans. The factory was on fire while I was there, but I don't think it was in 1875, though. I cannot tell about the time.

X Q. 77. How long did this interrupt the business of the manufacturing of buggies and working in the shop?

Ans. It did not interrupt the trimming department at all.

X Q. 78. Did W. H. Ransom work there while you were there; and, if so, when and in what capacity?

Ans. He was employed there as superintendent while I was there. The exact time he came there I could not tell.

X Q. 79. What did Richmond do in wood-work, and could he have used the Richmond sheath without your knowledge?

Ans. Mr. Richmond acted as foreman of the wood-working department. He certainly could not have used the Richmond sheath without my knowledge.

249 X Q. 80. Were you frequently in the wood department and familiar with all that was going on in that department, and did you frequently see Richmond in there?

Ans. I was frequently in the wood-working department. I was familiar with what was going on in that department. I have often seen Richmond in there and talked to him.

X Q. 81. How did they fill the end of the moldings while you were employed with Emerson & Fisher?

(Objected to because assuming that they were filled when they were not.)

(Defendant's counsel withdraws the last question.)

X Q. 82. Was there or was there not any way to stop the molding from running entirely through the sheath; and, if so, by what means was it done?

(Objected to, as the witness has not testified that any sheath was used in putting the molding onto dashes, but, on the contrary, has testified that no sheath was used, and that the only means employed was the application of a mallet or stick used as a hammer with which the end of the molding was struck.)

Ans. As I said before, there was no sheath ever used in the factory.

250 X Q. 83. In answer to question 14 of this examination you say that if such a device as Richmond sheath were used for putting on moldings, or words to like effect, that it might last to put on two or three moldings, but it would not last a day. Upon what do you base your judgment if you did not use any such device while at Emerson & Fisher's?

Ans. I base my judgment upon the fact that the sharp edge of the molding used upon that sheath would soon knock that metal stop out, and it would be so inconvenient to keep fastening that thing in there that a man could not put on more than two rails in a week.

(Witness illustrates by holding up Richmond sheath, giving it a slight tap, on account of which the stop falls out.)

(Counsel for complainant, being requested by the complainant in person, says that, in view of the delays in putting questions and the immaterial and incompetent character of the questions of cross-examination and the evident intention to hinder and delay the completion of the examination of this witness by unnecessary questions until the expected return of C. M. Peck, Esq., renews the notice of his motion heretofore made, and requests the notary to note that the complain-

251 ant has been here in person since the beginning of the examination of this witness and in attendance thereon, and is now here, at a distance from Columbus, his home, and upon expense.)

(The defendant denies again the above charges of delay for the reasons above stated, and says that he has been present by counsel and personally so much of the time as he could be spared from his his business.)

Six o'clock p. m.

The further taking of these depositions is hereby adjourned until Tuesday, January 9th, 1883, at 9 o'clock a. m.

HERMAN MERRELL,
N. P., Acting Sp'l Ex'r.

Met this Tuesday, January 9th, 1883, pursuant to adjournment. Present: Wm. H. Fisher, Esq., for complainant, and C. M. Peck, Esq., for respondent.

JOSEPH N. O. GREAR, re-examined by counsel for complainant:

Q. 84. In your answer to X ques. 67 you say, "None that I know. I mean no other kind of moldings." Do you mean by that answer to say that they did use the Peel and Elster molding in 1875?

252 Ans. There were some used, to some extent, in 1875. I was not there in 1874, and don't know anything about what they used in 1874.

Q. 85. In your answer to X ques. 43 you say, as a part of your answer, "To the best of my knowledge, I never seen any moldings used in 1875." Please explain your answer to this question and to the last question you have answered this morning.

Ans. I must have made some kind of mistake there; I mean that in the first part of the year 1875 there wasn't any used that I can remember, but in the latter part of 1875 there was.

Q. 86. Do I understand that you mean to be understood in your answer to X quest. 27 that your only means of knowing that the Exhibit Richmond Sheath was not used at Emerson & Fisher's while you were there was because you did not happen to see or hear of it, or do you mean to be understood, as you have testified in other answers, that, from your acquaintance with the various parts of Emerson & Fisher's factory and with the workmen and the work there, you are positive that if such a tool or device as Richmond
253 sheath had been exposed to public view and used there you would have known of it?

(Objected to as leading, improper, and argumentative.)

Ans. What I want to explain is that I was familiar with the hands in the different departments and with their work in those departments, and if such a thing as Richmond sheath was used I would have certainly known it, as it would have been a new thing in use, and I have no doubt that some of them would have shown it to me or told me of it, as I was likely to be called on to put on moldings myself, and, being very intimate with all the boys, they would surely have shown me an easier plan than what I had been using, as this is.

JOSEPH N. O. GREAR.

254 And JOHN GLENN, being first duly sworn, deposes and says, in answer to interrogatories to him propounded by Wm. H. Fisher, Esq., counsel for complainant, as follows, to wit:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is John Glenn; age, 24 years; residence, 16 Linneaus street, Cincinnati; occupation, carriage trimmer. I am now employed at Louis Cook's.

Q. 2. State whether or not you ever worked for Emerson & Fisher, carriage manufacturers, Cincinnati, Ohio, and, if you did, state when you began to work for said firm, when you left their employ, and whether you worked continuously from the time you entered their employ until you left it; also, in what department or at what branch of the business you worked.

Ans. Yes, sir; I worked for them, commencing the 22nd of April, 1875. I left there some time in May, 1879; I don't remember the day. I worked continuously all but two weeks in 1878. I started in the trimming room, and in May, 1875, went into the ware-
255 room at finishing. I worked at that for a year and then went back to trimming.

Q. 3. State whether or not Emerson & Fisher during the time you worked for them made leather-covered dashes; and, if they did, tell us in what style or mode the top edges or top portions of the dashes were usually constructed.

Ans. Yes, sir; they made leather-covered dashes. The top edges were stitched and trimmed off and blackened. Occasionally they put a molding on.

Q. 4. Tell us how the moldings were put onto the top edge of the dash and what means were used to put them on?

Ans. They were driven on with a club or a mallet.

Q. 5. How did you use the club or mallet in putting on the molding; tell us a little about it in detail.

Ans. We used to slip the molding onto the top edge of the dash until it got a hold, and drive it on the balance of the way with a club or mallet.

256 Q. 6. Please examine Defendant's Exhibit Richmond Sheath and state whether or not you ever saw such a device, either of soft wood or hard wood, long or short, or anything like it, used at Emerson & Fisher's in putting moldings onto dashes while you were in their employ.

Ans. No, sir; I never did.

Q. 7. Examine Complainant's Exhibit Staver Stick and state whether or not you ever saw at Emerson and Fisher's a device such as the said exhibit or anything like it, long or short, used to put moldings onto dashes.

Ans. No, sir.

Q. 8. Did you ever see or hear of a device such as mentioned in my last two questions at Emerson & Fisher's, whether used or not?

Ans. No, sir.

Q. 9. If a device such as mentioned in my questions 6 and 7 had been used at Emerson & Fisher's factory while you were in their employ would you have known of it?

(Objected to as incompetent.)

Ans. Yes, sir.

257 Q. 10. What were your chances and opportunities of knowing what means were used at Emerson & Fisher's to put moldings onto dashes while you were there?

Ans. While I was finishing up I was working right on the same bodies with the men putting on the dashes. Whenever they would put on a molding they would drive it on; that was on good work.

Q. 11. Did they put moldings onto dashes of jobs called poor work?

Ans. No, sir; not while I was finishing.

Q. 12. Where or in what room at Emerson & Fisher's were the molding- usually put onto the dashes and why?

Ans. They generally put them on in the wareroom. They fastened the dash down to the body. Occasionally they put one on up in the trimming room.

Q. 13. In finishing up how near were you to the men who were putting a molding onto the dash?

Ans. When they would put one on I would work right on the same body.

Ques. 14. Did you assist men in getting on the moldings?

258 Ans. No, sir; it was not our branch.

Ques. 15. State whether or not you had full means of knowing how they put the moldings onto the dashes in the finishing shop, and did you see or notice what means they did use.

Ans. Yes, sir; I had every chance in the world of seeing them put on. They were put on just where I was working. I did notice the means they used. They drove them on with the club or mallet.

Ques. 16. If a device like Defendant's Exhibit Richmond Sheath, long or short, or like Complainant's Exhibit Staver Stick had been exposed to public view in the finishing room or used there in putting moldings onto dashes would you have known of it?

Ans. Yes, sir.

Ques. 17. State whether or not if such a device as mentioned in my last question had been exposed to public view in the trimming room or been used there while you were in the employ of Emerson & Fisher would you have known of it.

Ans. Yes, sir.

259 Ques. 18. State what opportunities you had of knowing what was going on in the trimming department at Emerson & Fisher's while you were there.

Ans. We used to have our bench in the trimming room and we had to get all our stock there, and when we would get done finishing we had to work there, and I worked three years in the trimming room after I got done finishing.

Ques. 19. State how easily the molding was put onto the dash—that is to say, could the molding be slipped easily onto the top edges of the dash leather, or did the molding go onto said edges hard and require force to drive it on said edges.

Ans. It was a very difficult job to put the molding on. It went on very hard and it took a good deal of pounding to get it on.

Ques. 20. You say it was a very difficult job to put on the molding. Will you tell us whether all the moldings that were attempted to be put on went on without accident—breakage or bending?

Ans. No, sir; a great many of them broke.

260 Quest. 21. State whether or not in the year you worked for Emerson & Fisher in their finishing room Valentine Fleckstein worked in said finishing room; and, if he did, tell us what his duties were and whether he was a journeyman or a "cub."

Ans. He used to work around there—sweep up, dust buggies, run errands, and give out stock. He was not learning no trade; he was just hired in the office and worked a little around the wareroom.

Ques. 22. State whether or not said Fleckstein was expert enough to put moldings onto dashes when you worked in the finishing room.

Ans. No, sir.

Ques. 23. State whether or not during the year that you worked in the finishing room said Fleckstein ever put moldings onto dashes in said room, to your knowledge?

Ans. No, sir.

Ques. 24. If said Fleckstein had put moldings onto dashes in said

finishing room during the year you worked therein would you have known of it?

(Objected to as incompetent.)

261 Ans. Yes, sir; I would.

Cross-examined by C. M. PECK, Esq.:

X Q. 25. Are you aware that Mr. Emerson, Mr. Fisher, Mr. J. T. Richmond, and Henry Staver and Valentine Fleckstein have each and all sworn that such a device as Exhibit Richmond Sheath was used for putting moldings onto dashes at Emerson & Fisher's in 1874 and 1875?

Ans. No, sir.

X Q. 26. I now tell you that they did so swear, and ask you whether or not you may not be mistaken when you assert positively that no such device was ever used at Emerson & Fisher's?

Ans. No, sir; I am not mistaken.

X Q. 27. Do you mean to intimate that these gentlemen have sworn falsely?

Ans. They are mistaken if they say the sheath was in use in 1875.

X Q. 28. You mean in general or continuous use?

Ans. In any kind of use from May, 1875. It was not in use at all.

262 X Q. 29. Did you work continuously in the room where moldings were put on dashes?

Ans. No, sir.

X Q. 30. How, then, do you pretend to know what was done in that room when you were not in it?

Ans. Well, when we would go in the morning we would have to go down-stairs and finish up the work, and when the work was all finished we would have to go back to the trimming shop.

X Q. 31. Did you loose any time in 1875.

Ans. Not after I started to work there; not a day.

JOHN GLENN.

And JOHN SCOLLINS, being first duly sworn, deposes and says, in answer to interrogatories to him propounded by counsel for complainant, as follows, to wit:

Ques. 1. State your name, age, residence, & occupation.

Ans. My name is John Scollins; age, 28 years; residence, south-east corner of Liberty and Baymiller streets, Cincinnati; occupation, carriage trimmer. I am at present engaged with Louis Cook.

263 Q. 2. State whether or not you ever worked for Emerson & Fisher, carriage manufacturers, Cincinnati, Ohio; and, if you did, state when you began to work for said firm, when you left their employ, and whether you worked continuously from the time you entered their employ until you left it; also in what department or at what branch of the business you worked.

Ans. I started to work there in the latter part of May, 1874, and worked for them during 1875 and 1876. I began to work for them

again in September, 1880, and worked for them until February, 1882. I lost a day occasionally, but very seldom, and never more than a day at a time. In 1874 and part of 1875 I stitched all the dashes and assisted in the wareroom, and during the balance of the time I worked on top work.

Ques. 3. During 1874 and part of 1875, when you stitched all the dashes, how was the top edge of the leather-covered dash usually finished?

Ans. It was trimmed off close to the stitching and polished up. We used molding on some of our best work. Either I put
264 that molding on or the finisher or some of the trimmers.

Ques. 4. How and by what means was the molding put upon the dash?

Ans. It was put on by the use of a mallet. We opened up the end of the molding a little and pressed it on by the hand a little way, and then drove it on with a mallet. They used to fit very tight, and often we would bend them and have to throw them away.

Ques. 5. State what your opportunities were for knowing the mode in which moldings were put onto dashes and the means employed in putting the moldings onto the dashes during the first time you were at Emerson & Fisher's.

Ans. I had every opportunity there was there. Besides stitching the dashes I assisted in the wareroom in finishing off work and could see everything that was going on there. I know what was done in the trimming room also, because I stitched all the dashes there.

Ques. 6. Was the wareroom known by any other name?
265 Ans. Yes; the finishing room.

Ques. 7. When moldings were put onto dashes at Emerson & Fisher's during the first time that you were there in what room or rooms were they put onto the dashes?

Ans. They were generally put on in the trimming shop; occasionally there might be a few put on down in the finishing room.

Ques. 8. Why were they put on at all in the finishing room?

Ans. Sometimes we would not have the time upstairs in the trimming shop and would take them down into the finishing room and put them on there. When they were taken down there the finisher put them on.

Ques. 9. Examine Defendant's Exhibit Richmond Sheath and state whether you ever saw or heard of such a device, either of soft or hard wood, long or short, while you were at Emerson & Fisher's; also examine Complainant's Exhibit Staver Stick and state whether or not you ever saw such a device or one substantially like it at Emerson & Fisher's?

266 Ans. No, sir; I never did. I am positive that if there had been anything of that kind I would have seen it.

Ques. 10. Judging from your experience and knowledge of the difficulty of driving moldings onto dashes, if a device like Defendant's Exhibit Richmond Sheath, of hard wood and of suitable length, were used in putting moldings onto dashes how long would such a device stand, and, also, how long would a device substantially like

Complainant's Exhibit Staver Stick last in use in putting moldings onto dashes?

A. I should judge, from my knowledge, that a stick like Richmond sheath, made of hard wood, would last for years. I think *I think* Exhibit Staver Stick would last equally as long.

Ques. 11. How long before that metal stop would break out in Exhibit Richmond Sheath if the same were in use in driving moldings onto dashes?

Ans. I should judge that would last as long as the stick.

Ques. 12. Do you understand how these devices are used?

267 Ans. No, sir; I never seen any used.

Ques. 13. Inasmuch as I find that you do not understand how these devices are used, I will now tell you that, according to the testimony of certain persons, the molding is inserted in the groove in the stick, and the molding then started on the top edge of the dash; then the rear end of the stick is hammered upon by a hammer or mallet or stick with sufficient force to drive the molding onto the dash. In view of such use, please tell us how long such device would stand or wear in use in putting on moldings.

Ans. In such a case as that I think it would not last longer than to put on a few moldings, because striking on the end of this Richmond sheath would loosen that metal in a very few raps, and by driving on the Staver stick the molding would run into the wood.

Ques. 14. Referring to my questions 10 and 11 and your answers thereto, will you explain in what manner you supposed, when you answered those questions, that these devices were used?

268 Ans. I thought this groove was merely to keep the molding straight, and that it was drawn on by some means or other.

Q. 15. State whether or not one Valentine Fleckstein worked at Emerson & Fisher's while you were there the first time in their employ; and if he did, state, if you know, about when he began to work for Emerson & Fisher, what position he occupied, and what were his duties.

Ans. Yes, sir; he worked there. I think he commenced shortly after I did. His duties were to sweep out the office, dust off the buggies, and run errands. His principal place was in the office.

Q. 16. State whether or not he was employed to put moldings onto dashes.

A. No, sir.

Q. 17. State whether or not Fleckstein was competent to put moldings onto dashes.

Ans. No, sir; he was not.

Q. 18. You have stated that the moldings were generally put on in the trimming room. Do you mean that after you got to

269 using the moldings more than you did at first they continued to apply the moldings, for the most part, in the trimming room?

Ans. No, sir. When they got to building buggies in large quantities they used to bolt on the dashes in the finishing room and put the moldings on after the dashes were bolted on.

Cross-examined by C. M. Peck, Esq.:

X Q. 19. During 1874 and 1875 in what room at Emerson & Fisher's did you work more than in any other?

Ans. I don't think that I worked in one more than the other—in the finishing room or the trimming room.

X Q. 20. What were your special duties at that time?

Ans. Stitching dashes, putting in oil-carpet in the finishing room, and tacking on falls.

X Q. 21. In what room were the moldings usually put onto the dashes at that time?

Ans. Some of them were put on in the trimming room and some in the finishing room.

X Q. 22. If you were told that Mr. Emerson, Mr. Fisher,
270 Jno. T. Richmond, Henry Staver, Valentine Fleckstein, had each and all of them sworn that such a device as Exhibit Richmond Sheath had been used in Emerson & Fisher's shops in 1874 and 1875 for putting moldings on dashes would you not be willing to admit that you were mistaken when you say no such device ever was used, and is not your testimony based entirely upon the fact that you never saw such a device?

Ans. It does not make any difference to me what those gentlemen swore to; I am positive that there never was such a device as this used in the shop.

X Q. 23. When were you first approached with reference to your testimony in this case, and by whom?

Ans. About a week and a half ago; by Mr. James McCurley.

X Q. 24. Relate what Mr. McCurley said to you at that time.

Ans. Mr. McCurley asked me about this sheath. I told him I had never seen anything of the kind in the shop.

X Q. 25. Is that all he said to you?

271 Ans. That is all.

X Q. 26. What are you to receive for giving your testimony in this case, if anything?

Ans. That is something I could not tell, as I felt it my duty to come here to tell what I know.

X Q. 27. Why can't you tell what you was to receive?

Ans. Because I never asked.

X Q. 28. Have you never been told?

Ans. No, sir.

X Q. 29. Are you at present out of employment?

Ans. No, sir; I am working for Louis Cook.

X Q. 30. Do you receive your pay the same when you are absent as when you are present?

Ans. No, sir.

X Q. 31. Had you been told before you came on the stand what the other witnesses in this case had sworn to?

Ans. No, sir.

X Q. 32. Did you know what Mr. Emerson, Mr. Fisher, Richmond, Staver, & Fleckstein had sworn to?

272 Ans. No, sir; I did not.

X Q. 32½. When you went to Emerson & Fisher's in which

room did you first go to work and how long did you remain at work in that room exclusively?

Ans. I first went to work in the trimming room; at the same time I was told that I would have to work in the finishing room, too. I don't suppose I worked a couple of days in the trimming room before I had to go to work in the finishing room.

X Q. 33. For what did you have to go into the finishing room, and for how long would you be kept there on each occasion?

Ans. To tack in oil carpet and put on falls and fit curtains; sometimes for a quarter of a day and half a day at a time.

X Q. 34. Your being there a quarter of a day and half a day at a time was the exception rather than the rule, was it not?

Ans. Well, I had work to do there; take it on an average, I was there generally about a quarter of a day.

JOHN SCOLLINS.

273 And PATRICK MORRISSEY, being duly sworn, deposes and says, in answer to interrogatories to him propounded by counsel for complainant, as follows, to wit:

Ques. 1. State your name, age, residence, & occupation.

Ans. My name is Patrick Morrissey; age, 24 years; residence, Baltimore pike, Fairmount, Cincinnati; occupation, carriage trimmer. I am now employed at Louis Cook's carriage factory.

Ques. 2. State whether or not you ever worked for Emerson & Fisher, carriage manufacturers, Cincinnati, Ohio; and, if you did, state when you began to work for said firm, when you left their employ, and whether you worked continuously from the time you entered their employ until you left it; also in what department or at what branch of the business you worked.

Ans. Yes, sir; I worked for them. I started to work for them when they started up, in 1871, and staid there until 1880. I worked continuously for them during that time. I worked in the trimming shop; I trimmed tops and did all branches of the work there.

274 Ques. 3. Up to the time when Emerson & Fisher began buying ready-made dashes to use on their work, and beginning with the year 1874, how was the top edge of the leather-covered dash usually made or finished?

Ans. Towards the last they started to use the moldings. In some they stitched them the same as on the sides, and in others they would make the big stitches for the moldings.

Ques. 4. State, if you know, how and by what means the molding was put upon the dash.

Ans. When they first got the moldings they were put on in the trimming shop; there were very few that they got; they were put on by a mallet or stick or club, as you call it.

Ques. 5. When the moldings were put onto the dashes did they go on easily or did they go on hard; and how much force was required to push or drive them into place; and did they always go on without accident or damage to the molding?

Ans. They went on hard; a good lot of force was sometimes required, and sometimes they would bend.

275 Ques. 6. In driving the molding onto the dash where did you use the mallet or club—at the side of the molding or directly upon its end, or how?

Ans. We used it on the end.

Ques. 7. State what your opportunities were for knowing the mode in which moldings were put onto dashes and the means employed in putting the moldings onto dashes at Emerson & Fisher's beginning with 1874 and ending with the year 1878.

Ans. They always put them on with a stick or club. I used to be down there and see them in the wareroom putting on the moldings.

Ques. 8. Please examine Defendant's Exhibit Richmond Sheath and state whether you ever saw or heard of a device like that exhibit, of soft or hard wood, long or short, at Emerson & Fisher's factory while you were in their employ; also examine Complainant's Exhibit Staver Stick and state whether you ever saw or heard of a device like said exhibit at Emerson & Fisher's while in their employ.

Ans. No, sir; I never saw or heard of either of them while I was there.

276 Ques. 9. If such a device had been used or in public view at Emerson & Fisher's while you were in their employ would you have known of it?

Ans. Yes, sir.

Ques. 10. State whether or not one Valentine Fleckstein worked for Emerson & Fisher while you were there; and, if he did, tell about when he began to work and what his duties were when he came and for, say, two years thereafter.

Ans. I think he came in 1875; I ain't positive, though, but I think it was in 1875. He worked in the office and swept up the wareroom and gave out stock when he first came there.

Ques. 11. For about how long after he came there did he follow these duties and do this work?

Ans. I guess, very near two years, to my knowledge.

Ques. 12. During those two years, state whether or not Fleckstein was competent to put moldings onto dashes.

Ans. I think not.

Cross-examined by C. M. Peck, Esq.:

X Q. 13. Did you work in the room where they put moldings onto dashes in 1874 and 1875?

277 Ans. When they first got them they used to put them on "A" grade jobs in the trimming room; there were very few they got, though. I worked in the trimming room, and they put on some down in the wareroom in 1875.

X Q. 14. Do you know how those were put on down in the wareroom?

Ans. Yes, sir; with a club.

X Q. 15. Did you ever see them put them on in the wareroom?

Ans. Yes, sir.

X Q. 16. How often?

Ans. Every day or every other day.

X Q. 17. How long did you stay in the wareroom each time?

Ans. Sometimes maybe not a minute, and other times five or ten minutes.

X Q. 18. Then, for all you know, they might have put on moldings in the wareroom in a number of different ways when you were not there, might they not?

Ans. If they did I would be sure to find out.

X Q. 19. That does not answer the question exactly and I
278 repeat it. (Question repeated.)

Ans. They always put them on with a club or mallet. That was the only way they had of putting them on.

X Q. 20. You mean so far as you know, don't you?

Ans. Yes, sir.

X Q. 21. And is not your entire testimony based upon the fact that you never saw or heard of such devices as Exhibits "Richmond Sheath" and "Staver Stick," and only that?

Ans. I never heard tell of them. I don't understand the question.

X Q. 22. X Ques. 21 repeated, with request that the examiner explain same to the witness. (Question explained.)

Ans. Yes, sir; that is the only reason.

X Q. 23. Who first approached you with reference to your testimony in this case and when?

Ans. Mr. McCurley, about two weeks ago.

X Q. 24. Do you mean Mr. James McCurley, the gentleman sitting over here?

Ans. Yes, sir.

279 Re-examined by counsel for complainant:

Q. 25. Do I understand you that you mean in your answer to X ques. 22 to be understood that your only means of knowing that the Exhibit Richmond Sheath and Staver Stick were not seen or heard of by you at Emerson & Fisher's was because you did not happen to see or hear of it, or do you mean to be understood that from personal observation, acquaintance with the workshop, work, and workmen of Emerson & Fisher's factory you are positive that if such a tool or device had been exposed to public view or used there you would have known of it?

(Objected to as improper, leading, and argumentative.)

Ans. Yes, sir; I would have known of it if they had one and used it. If they had one they must have kept it hid somewhere, because they always used a club.

PAT. MORRISSEY.

The further taking of these depositions is hereby adjourned until Wednesday, January, 10th, 1883, at 9.30 o'clock a. m.

HERMAN MERRELL,
N. P., Acting Sp'c'l Ex'r.

280 Met this Wednesday, January 10th, 1883, pursuant to adjournment.

Present: Wm. H. Fisher, Esq., for complainant, and Chas. E. Brown, Esq., for respondent.

And JOSEPH A. SCHOENBERGER, being first duly sworn, deposes and says, in answer to interrogatories to him propounded by counsel for complainant, as follows, to wit:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is Joseph A. Schoenberger; age, 28 years; residence, 59 Western avenue, Cincinnati; occupation, mailing clerk at Benziger Bros., 143 Main St.

Ques. 2. State whether or not you ever worked for Emerson & Fisher, carriage manufacturers, Cincinnati, Ohio; and, if you did, state when you began to work for said firm, when you left their employ, and whether you worked continuously from the time you entered their employ until you left it; also in what department or at what branch of the business you worked?

Ans. Yes; I did work for them. I began there in February, 1874, and kept on continuously until the fall of 1879. I was em-
281 ployed in the trimming department. I entered as apprentice at that time. All parts of the trimming was done there, including the making of dashes, at that time.

Q. 3. State whether or not leather-covered dashes were made at Emerson & Fisher's; and, if yea, tell us how the top edge of the dashes was usually made or finished during the years 1874 and 1875.

Ans. Well, they were made leather-covered, and all throughout 1874 I am quite positive that no other was used than the substantial railing, and also through-t the year 1875, to the best of my knowledge, there was no other used.

Ques. 4. Please explain what you mean by "the substantial railing;" briefly describe it.

Ans. It was simply a solid iron rod affixed to the frame of the dash proper and about a quarter of an inch thick and rased about an inch above the top of the dash frame proper.

Ques. 5. State whether or not, at Emerson & Fisher's, at any time, moldings were put upon the top edge of the dashes; and, if they were, state, if you know, how they put these moldings onto the dashes.

(Objected to, as witness is incompetent.)

282 Ans. They were put on by simply placing one end of the molding onto the top edge of the stitching and driving the molding on with a mallet.

Ques. 6. In driving the molding onto the dash where was the mallet used, at the side of the molding or directly upon its rear end, or how?

(Same objection.)

Ans. On the side of the molding—that is, at this point. (Witness puts his finger on one end of the molding "Exhibit Dash Molding.")

(Same objection.)

Ques. 7. When the moldings were put onto the dashes did they go on easily or go on hard, and how much force was required to push or drive them into place, and did they always go on without accident or damage to the molding?

(Same objection.)

Ans. I should say very hard, sometimes requiring the force of two or three men; they did not always go without accident or damage.

Ques. 8. State what kind of accident or damage happened to these moldings while being put upon dashes.

(Same objection.)

283 Ans. Bending out of shape.

Ques. 9. State whether or not you frequently saw these moldings put upon dashes after the time when Emerson & Fisher's factory began to use them upon dashes; also state in general what your opportunities were for knowing the mode in which moldings were put on dashes and the means employed in putting the moldings onto dashes beginning with the year 1874 and ending with the year 1878.

(Same objection.)

Ans. I did so see them used; at just what time they began to use them I could not state definitely, but am quite positive that they were not used in 1874, and to the best of my knowledge not in 1875, either; my opportunities for knowing were, in the first place, my position as trimmer and my passing through the finishing department as often as four times a day regularly; also the calling from the trimming shop occasionally to repair some damage done to work while being transferred from the trimming room to the finishing department.

Ques. 10. Please examine Defendant's Exhibit "Richmond
284 Sheath" now shown you and state whether while at Emerson & Fisher's you ever saw or heard of a device like said exhibit, either of soft or hard wood, used in putting moldings onto dashes or as being there in said factory for any purpose whatever; also examine Complainant's Exhibit "Staver Stick" now shown you and state whether while at said factory you ever saw or heard of such a device used there or being there for any purpose whatsoever.

Ans. No; to the best of my knowledge, neither one nor the other device was used during the time of my employment there.

Quest. 11. If a device such as mentioned in my last question had been used in the factory of Emerson & Fisher or exposed to public view there while you were in their employ would you have known of it?

Ans. I should think so; most certainly.

Ques. 12. When you began to work for Emerson & Fisher how many hands worked in the trimming shop and who did the finishing?

Ans. Two—H. Staver and P. Morrissey, the first-named doing the finishing, occasionally assisted by Mr. John Fisher himself.

285 Ques. 13. State, if you know, when Valentine Fleckstein began to work for Emerson & Fisher and what his duties were.

Ans. No; I could not state definitely, but think that he was not employed before the spring of 1876; doing the work of office boy, cleaning, sweeping, &c., assisting in carrying work from the trimming room to the finishing department and transfer them—that is, ready-made work—to the railway depot.

Ques. 14. State about how long Fleckstein continued to perform these duties.

Ans. I could not state.

Ques. 15. During the year 1876 tell us whether he was competent to put moldings onto dashes.

Ans. No; I think not.

Cross-examined by C. M. PECK, Esq.:

X Q. 16. Is not your testimony as to the non-use of such a device as "Richmond Sheath" at Emerson & Fisher's based entirely upon the fact that you never saw or heard of such a device and only that?

Ans. Yes, sir.

286 X Q. 17. By whom were you first approached with reference to your testimony in this case, and when?

Ans. By Mr. J. McCurley. If I am right, it was the latter part of last month; I could not state the day or week.

X Q. 18. Mr. McCurley was the first witness examined under the present notice and has been present here during the testimony of all the other witnesses since himself and is now sitting on the opposite side of the table to you. Is that the Mr. McCurley to whom you refer?

(Objected to as immaterial and incompetent, particularly the part of the question ending with the word "himself."

Ans. Yes.

Re-examined:

Ques. 19. Do I understand you that you mean in your answer to X ques. 16 to be understood that your only means of knowing that such a device as Richmond sheath was not used at Emerson & Fisher's was because you did not happen to see or hear of it, or do you mean to be understood that from personal observation, acquaintance with the workshop, work, and workmen of Emer-

287 son & Fisher's factory, that if such a device had been used there you would have known of it?

(Objected to as improper, leading, and argumentative.)

Ans. My answer to X ques. 16 is a mistake. It should be no. I mean to be understood that I would have known for the reasons stated in the latter part of your question.

Recross-examined:

X Q. 20. Would you still be so positive in asserting that such a device as Richmond sheath was never used at Emerson & Fisher's in 1874 and 1875 if you were informed that five others who were in the shop at that time, including Mr. Emerson and Mr. Fisher, the proprietors, had sworn that such a device was used?

Ans. Yes.

JOS. A. SCHOENBERGER.

288 STATE OF OHIO, } ss:
County of Hamilton, }

I, Herman Merrell, a notary public within and for said county, selected to act as special examiner under the 67th rule, in equity, as amended, in the cause stated in the caption, do hereby certify that the foregoing examination was had, pursuant to the annexed notice, at the office of Wm. Hubbell Fisher, Esq., No. 12 and 13 Wiggins block, Cincinnati, Ohio, on the 5th, 6th, 8th, 9th, and 10th days of January, A. D. 1883.

I further certify that at the said time and place I was attended by James W. McCurley, George Huber, John N. Dornsiefer, Joseph N. O. Grear, John Glenn, John Scollins, Patrick Morrissey, and Joseph A. Schoenberger, witnesses produced on behalf of the complainant, they being of sound mind and lawful age, and the said witnesses were previously to the commencement of their depositions by me severally cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions hereinbefore appearing were by me reduced to writing in the presence of and read over by me to said witnesses respectively, and were thereupon subscribed by them respectively in my presence.

289 I further certify that I am not of counsel nor attorney nor relative of either of the parties to this cause nor in any manner interested in the result thereof.

In testimony whereof I have hereunto set my hand and affixed my seal of office this 11th day of January, 1883.

[SEAL.] HERMAN MERRELL,
Notary Public, Acting Special Examiner.

Cost Bill.

Herman Merrell, depositions & subpœna, &c.		$52 15
Witnesses:		
J. W. McCurley,	2 days	3 00
J. N. Dornseifer,	1 "	1 50
J. N. O. Grear,	2 "	3 00
John Scollins,	1 "	1 50
George Huber,	2 "	3 00
John Glenn,	1 "	1 50
P. Morrissey,	1 "	1 50
Jos. A. Schoenberger,	1 "	1 50
Total		$68 65

Paid by complainant.

290 And afterwards, to wit, on the 19th day of January, A. D. 1883, came the complainant and filed in the clerk's office of the court aforesaid certain depositions in this cause; which depositions are in the words and figures following, to wit:

Depositions of C. D. Firestone, Oscar G. Peters, Edwin H. Mooney, and George M. Peters.

Circuit Court of the United States, Southern District of Ohio, Western Division. In Equity.

GEORGE M. PETERS
vs.
THE ACTIVE MANUFACTURING COMPANY. } No. 3206.

Examination of witnesses at the request and on behalf of the complainant above named, under the 67th rule of practice for the courts of equity of the United States, in pursuance of the notice hereto attached and subject to the stipulations herein mentioned, before me, H. F. Guerin, agreed acting special examiner and notary public in and for the county of Franklin, State of Ohio, to take the following depositions.

It is stipulated by the parties that these depositions be taken before me, H. F. Guerin, by questions and answers.

H. F. GUERIN,
Notary Public and Agreed Acting Special Examiner

Present: J. W. Firestone, counsel for complainant.

291 C. D. FIRESTONE, witness produced by complainant, being first duly sworn, deposes and says as follows:

Q. 1. State your name, age, residence, and occupation.

A. 1. My name is C. D. Firestone; age, 34 years; residence, Columbus, Ohio; occupation, manufacturer.

Q. 2. Are you acquainted with William Peel, Esq., of the firm of Peel & Elster, manufacturers of dash moldings, at Springfield, Ohio?

A. 2. I am.

Q. 3. Are you acquainted with Geo. M. Peters, of Columbus, Ohio, and do you know him to be the patentee of a certain device for putting moldings on carriage dashes?

A. 3. I am acquainted with Geo. M. Peters, and letters patent were granted him for a sheath for putting metal-ic moldings on dashes on June 6th, 1876.

Q. 4. State whether or not you was present at and heard a certain conversation between the said Wm. Peel and Geo. M. Peters relative to the manufacture by said Peel and for use by his customers of the patented device of Geo. M. Peters for drawing moldings on dashes; if yea, state when and where said conversation took place, who was present, and what was said.

292 A. 4. I was present at and heard the conversation between Wm. Peel and Geo. M. Peters. This conversation took place in the fall of 1878, at the office of the Peters Dash Company, in Co-

lumbus, Ohio. The only persons present were Geo. M. Peters, Wm. Peel, Oscar G. Peters, and myself. After passing the compliments of the day Mr. Peel stated to Peters what he had come to Columbus to see him in regard to securing the right to use his patent sheath for applying moldings to dashes for two of his customers, Emerson, Fisher & Co. and Lewis Cook, of Cincinnati, O. Mr. Peters at first objected to allowing him to supply said customers with the molding sheath, and said he feared that they might at some time get into the hands of an opposition dash Co., and might be used against us in some way. Mr. Peel stated that he would guarantee that they should never go beyond his control, and that Mr. Peters need not have any fears of their getting into the hands of opposing parties. Mr. Peters then told him that if he wanted to make the two machines, one for Emerson, Fisher & Co. and one for Louis Cook, and loan them to them for their own private use, with the distinct understanding that any time he wanted them returned from any cause whatever that he (Peel) would get the machines and return them to Mr.
293 Peters. Mr. Peel said, "All right; I agree to that." He was very thankful for the favor, and said he would guarantee there would be no trouble about the matter. Mr. Peters then gave Mr. Peel the date of the patent and requested him to mark the date on both of the machines, which Mr. Peel agreed to do.

Q. 5. Where was the office of the Peters Dash Co. located in which this conversation took place?

A. 5. It was in what was known as our then new office, located on the southwest corner of Fair alley and Locust alley, directly west from the offices we at present occupy.

Q. 6. Mr. Peel is asked in his deposition, X question 31, viz: "At the time, when at Columbus, Mr. Peters gave you permission to make three of these machines where was the shop located in which you had the said interview with Mr. Peters?" Mr. Peel replied: "It was northwest from where their present office is, across the street," and in X ques. 32 Mr. Peel asked, viz: "Did your interview take place in that shop; and, if yea, where was that office located in reference to the shop?" Answer. "It was in the southeast corner of the shop." You may now state whether or not Mr. Peel is correct in his
294 answer to the two foregoing questions and give any reason you may have as to why he is not correct.

A. 6. Mr. Peel is not correct in his answers as to where said conversation took place. He testifies that this conversation took place in the fall of 1878. We moved our office from the frame building he describes to the brick building across Locust alley and situated on the southwest corner of Locust and Fair alleys in February of 1878. Therefore, it could not have taken place where he stated.

Q. 7. State whether or not you ever had a conversation with Mr. Peel about the Active Manufacturing Co. of Cincinnati, Ohio, using this machine for putting moldings on dashes patented by Geo. M. Peters. And, if so, when, where, and what was said and at whose instance did you have said conversation?

A. 7. I had a conversation with Mr. Peel at the Gibson House, in Cincinnati, O., a few days after the Active Manufacturing Co. filed

their answer to the first suit brought by Mr. Peters against them for infringing the above-named patent. He obtained a copy of their answer, in which they said they were using a sheath under license from Geo. M. Peters. Mr. Peters sent our att'y to Springfield to see Mr. Peel and have him meet me in Cincinnati at the Gibson House.

Mr. Peel met me at the Gibson House as per appointment.
295 I told him what the Active Manufacturing Co. claimed in their answer, and that Mr. Peters said that he (Peel) had violated his contract in allowing Emerson, Fisher & Co. to give the molding sheath to the Active Manufacturing Co., and that he must proceed at once to get the sheaths that he had made and loaned to the above-named Emerson, Fisher & Co. and Lewis Cook and return them to Mr. Peters as per agreement. Mr. Peel stated that it was wrong for Emerson, Fisher & Co. to allow the Active Manufacturing Co. to use this sheath, and he would go at once and demand the sheaths and return them. He then left the hotel and I made an appointment to meet him at the Hotel Emery between 12 and 1 of that day. I then went out into the city to visit our trade and, among others, called upon Emerson, Fisher & Co., about noon. Mr. Emerson then told me that Mr. Peel had been to see him and demanded the sheath that he (Peel) had loaned them (Emerson, Fisher & Co.); that Mr. Peters had demanded him (Peel) to return it to him (Peters) at Columbus, Ohio. Mr. Emerson told me that he didn't propose to have any trouble about the matter, and that he would get the sheath and return it. I told him that was my mission to Cincinnati, to meet Peel and have him return
296 the sheaths. We (Mr. Emerson & myself) then took a Central avenue car, and came down-town and met Mr. Peel at the entrance of the hotel Emery. Mr. Emerson told Mr. Peel that he, Emerson, had told me of the conversation that he and Peel had that morning, and that he had told me the same as he had told him (Peel), that he would get the sheath and return it at once. To this Mr. Peel remarked, "Mr. Emerson, that makes me feel good. I was considerably worried about this matter; I always thought you were a fair, square man, and now I know it to be a fact." Mr. Emerson thanked him for the compliment and left, saying that he was going down to the bank. I then asked Mr. Peel if he had been out to see Mr. Cook to get the sheath that Cook had. He said he had not, but was going right out and would demand it and return it. We then separated, Mr. Peel saying that he would take the car and go right out to Cook's. I met Mr. Peel at Cincinnati and acted under the instructions of Mr. Geo. M. Peters.

Q. 8. Please examine letters patent No. 178,463, and dated June 6th, 1876, and state, if you know, when Mr. Geo. M. Peters made the invention described and claimed in said letters patent.

(Mr. Firestone, counsel for Mr. Peters, here hands witness
297 copy of letters patent No. 174,463, and witness examines same.)

H. F. GUERIN,
Notary Public.

A. 8. I do not know exactly when Mr. Peters invented the sheath, but I know that he applied moldings to dashes with wooden sheaths in the spring of 1874, about April or May, and applied moldings to dashes with sheaths of different kinds until he perfected the one described in the above letters patent.

Q. 9. Have you had any experience in applying dash moldings to dashes by means of a sheath?

A. 9. Yes, sir; I have; I have been engaged in the manufacture of buggies and dashes for the last thirteen years.

Q. 10. Please examine the Exhibit "Richmond Sheath" and Exhibit "Staver Stick" and state from your knowledge of putting moldings onto dashes how long, in your opinion, would a device like either of said exhibits, either of hard or soft wood, stand in ordinary use in putting moldings onto dashes?

Counsel for claimants here hands witness above-named exhibits, which are examined by witness, who makes reply as follows.

H. F. GUERIN,
Notary Public.

298 A. 10. I have examined exhibits above-named and would state that they would not last long enough to pay for making; that at the farthest it would be impossible to put on very many moldings with either of them without splitting out. In the Richmond sheath, if it was struck by a hammer or mallet, which would be necessary to use in applying moldings to dashes, from the manner in which they are constructed, would cause the iron stop to become loose and would batter up the wood and would very soon break out entirely; besides, the amount of hammering on the end of the sheath that it would require to drive the molding on would batter up the end and cause it to split. The objections to the Staver stick are, first, by the molding resting against the wood, the grain of which runs lengthwise, would cause the molding to drive into the wood fully an inch or two in driving on a single dash molding, and the striking on the end with a hammer or mallet would very soon cause it to batter up & split the same as the "Richmond sheath." Another objection to wooden sheaths, in our experimenting, we found that in driving the molding on the dash the wood is not of sufficient strength to prevent the molding from breaking out
299 the inner edges and allowing the molding to buckle up and destroy it. We have frequently experimented with putting moldings on with wooden sheaths, and we to-day tried several experiments with sheaths made from very hard ash wood, of similar shape as the "Richmond sheath" and "Staver stick," and we could not successfully put on a single molding with either one without destroying the molding or sheath.

Q. 11. Please examine Exhibit- "Firestone Dash and Sheath 1 and 2" and state whether or not you ever saw said exhibit before; and, if so, when, and what do they illustrate.

A. 11. I have examined the exhibits called for in the foregoing question, and would say that I have seen them before, and they are the same sheaths referred to in my foregoing answer to quest. 10,

when I say we to-day tried several experiments with sheaths made from very hard ash wood. In making these experiments, which was done in the presence of Mr. Geo. M. Peters, myself, and several of our employees, we requested the superintendent of our dash department to take our regular moldings and dashes, such as we are applying or using every day, and apply the moldings to dashes very carefully by means of these wooden sheaths. In Exhibit "No. 1," in driving the molding on the first dash, we battered up
300 the end considerably, and the molding drove into the wooden part of the sheath over an inch or more, so that it was impossible to release the sheath from the molding without destroying the sheath or molding or the dash. We slip-ed the molding into the groove of the sheath from the end and held the dash in a vise especially for the purpose; then started the molding on the dash, and then forced it on by driving with a mallet on the rear end of the sheath. We proceeded in the same manner with "Firestone Exhibit No. 2," and before we got the molding onto the dash the wood along the edges of the groove gave way, caused by the pressure of the molding outwardly, which permitted the molding to buckle out from the groove and destroy the molding. I also discover that the screw which we placed in the wooden sheath to act as a stop for the molding, in only putting this molding partly on, moved the screw out of its position; and, judging from my experience, the hammering required in applying moldings to dashes, and, as this experiment shows, by the battering up of the rear end of the wooden sheath, that the screw would be entirely torn out of the sheath in attempting to apply one or two more moldings.

301 Complainant here offers in evidence "Firestone Exhibit No. 1" and "Firestone Exhibit No. 2," and requests the notary — accordingly.

H. F. GUERIN,
Notary Public and Acting Special Examiner.

C. D. FIRESTONE.

Depositions of Oscar G. Peters.

OSCAR G. PETERS, witness produced by complainant, being first duly sworn according to law, deposes and says as follows:

Q. 1. State your name, age, residence, and occupation.

A. 1. My name is Oscar G. Peters; age, 40 years; residence, Columbus, Ohio; by occupation am a manufacturer.

Q. 2. Are you acquainted with William Peel, Esq., of the firm of Peel & Elster, manufacturers of dash moldings, at Springfield, Ohio?

A. 2. I am.

Q. 3. Are you acquainted with George M. Peters, of Columbus, Ohio?

A. 3. I am.

Q. 4. State whether or not you was present and heard a certain conversation between said Wm. Peel and George M. Peters relative
302 to the manufacture by said Peel and for use by his customers of a certain patent sheath of George M. Peters for

drawing moldings on dashes; if yea, state when and where said conversation took place, who was present, and what was said.

A. 4. Mr. Wm. Peel had a conversation in the office of the Peters Dash Co., at Columbus, Ohio, with Mr. Geo. Peters, in the presence of Mr. C. D. Firestone and myself, some time in the fall of 1878. Peel then asked Mr. Geo. Peters if he wouldn't allow him (Peel) to make two of his (Peters') patent sheaths for putting moldings on dashes. He said he wanted one for Emerson, Fisher & Co. and one for Lewis Cook, two of his (Peel's) customers. Mr. Geo. Peters hesitated and suggested that it might do him (Peters) harm by falling into the hands of other dash companies. Peel replied that he knew that they wouldn't; that he would not allow it, and that he would get the sheaths at any time called for by Peters and deliver them up to Peters; also said it would help him (Peel) very much in sale of moldings if Peters would grant this favor. Under this promise of Peel's to return the sheaths, Peters, after consulting with myself and Mr. Firestone, gave his consent with the understanding that Peel would have the words "patented," with date of patent, put on each sheath. Peters then gave Peel the date of patent.

303 Peel said he would stamp them as requested.

Q. 5. Where was the office located where this conversation took place?

A. 5. In the brick building of the Peters Dash Company, on the southwest corner of Fair alley and Locust alley, immediately west of the present office of the Peters Dash Company.

Q. 6. Did you at any other time have a conversation or conversations with Mr. Peel relative to the use by his customers or others of this patent sheath; and, if so, when and where, and what was said?

A. 6. Yes, I had other conversations. After I discovered, by the answer of the Active Manufacturing Co. to the first suit brought against them by George M. Peters on this patent sheath, that the Active M'f'g Company claimed to use the sheath under a license from Mr. Geo. Peters, I urged Mr. Peel and insisted on him returning those two sheaths, having been instructed so to do by Mr. Geo. Peters in case I met Mr. Peel. Mr. Peel said he would do so as soon as he went to Cincinnati, which would be the next week. This conversation took place in the office of the Peters Dash Company.

And further this deponent says not.

OSCAR G. PETERS.

304 EDWIN H. MOONEY, of lawful age, being first duly sworn according to law, deposes and says, as follows:

Q. 1. State your name, age, residence, and occupation.

A. 1. My name is Edwin H. Mooney; age, 24 years; residence, Columbus, Ohio; by occupation am a dash-maker.

Q. 2. For what period of time have you been employed as a dash-maker?

A. 2. Since March 8th, 1878.

Q. 3. Where are you now employed, and how long have you been so employed?

A. 3. At the Peters Dash Company; have been in their employ since March 8th, 1878.

Q. 4. Did you ever have occasion, in your experience as a dash-maker, to apply metallic moldings to dashes; and, if so, to what extent?

A. 4. I have had occasion to put a great many moldings on dashes since I entered the employ of the Peters Dash Company, and during the last two years have been superintendent of the dash factory of the Peters Dash Co., and since my employment commenced, on March 8th, 1878, the Peters Dash Co. have applied about 350,000 moldings on dashes—that is, the metal moldings. They have
305 also made a good many leather moldings.

Q. 5. From your knowledge, as a result of your experience of putting metal moldings on dashes, how long, in your opinion, would a device or sheath like Defendant's Exhibit "Richmond Sheath" or like Complainant's Exhibit "Stave Stick," made of either hard or soft wood, stand, in ordinary use, in putting moldings onto dashes? Give any reason you may have for the opinion you express.

Witness is here handed the exhibits called for in the question.

H. F. GUERIN,
Notary Public.

A. 5. I have examined the exhibits called for in the question, and with regard to the Exhibit "Richmond Sheath," in my opinion, if made long enough and of suitable size the sheath wouldn't stand more than putting moldings on two or three dashes. The metal stop would work loose and drop out by reason of the strain brought to bear upon it by the molding in process by being applied to the dash. If the stop didn't drop out the molding would buckle and twist out of the sheath by reason of the pressure necessary to apply it to an ordinary dash, because the pressure of the molding against the outer edges of the groove would cause the edges of the groove to give way,
306 thereby letting the molding twist and buckle out. The only means of applying moldings to dashes by means of this wooden sheath would be by hammering on the rear end of the sheath, thereby jarring the iron stop loose and causing it to drop out, as there would be no means of holding it in when the sheath was turned in the proper position to apply molding to the dash—that is to say, with the stop downward or under side. These moldings are put on very tight, and the necessary hammering on the rear end of the sheath would bruise the end and cause it to split. In Complainant's Exhibit "Staver Stick" I find the only substantial difference between it and the Exhibit "Richmond Sheath" is in the fact that in the "Staver stick" there is no metal-ic stop for the rear end of the molding to press against, and in this exhibit the rear end of the molding presses against the wood at the rear end of the groove. In my opinion, a sheath of this kind would not stand the putting on of more than one molding as tight as they usually go on; and in fact, in my opinion, I doubt if a single molding could be successfully put on a dash by the use of a sheath like this, because the rear end of the molding would cut into the wood so that it woud

be impossible to remove the sheath from the molding without
307 taking the molding off of the dash with the sheath. The other objections in regard to the "Richmond sheath," which I have stated above, are applicable to the "Staver stick." In this exhibit I also find the only mode of applying moldings is by the use of a mallet or hammer on its rear end. I am strengthened in this opinion not only by my long experience in applying moldings to dashes, but from the fact of practical experiments carefully made by me to-day in the presence of Geo. M. Peters, C. D. Firestone, and others, where I took dashes and moldings from our regular stock, and just as we are applying by hundreds every day, and attempted to apply the moldings to dashes by means of sheaths made of hard ash wood, and similiar to Exhibits "Staver Stick" and "Richmond Sheath." The first attempt was made by means of a sheath similar to the "Staver stick," in which sheath the rear end of the molding pressed against the wood at the rear end of the groove in the sheath. I first applied the dash in a vise or clamp used especially for this purpose, and then placed the molding in the groove of the sheath, and then by use — a mallet I attempted to apply the molding on the dash by hammering with a mallet on the rear end of the sheath.

Before I had driven the molding entirely onto the dash I
308 found that the rear end of the molding where it pressed against the wood at the end of the groove had cut into the wood an inch or more, and thereby prevented me from putting the molding on the dash complete.

I also made another experiment with another sheath made similar to the "Richmond sheath," except this sheath, instead of having a metal stop like the "Richmond sheath," had a metal screw screwed clear through the wood at the rear end of the groove to act as a stop for the rear end of the molding. I attempted to apply a molding to a dash taken from the same stock, and attempted to apply it in the same way as I did with the first experiment, and I found that in so attempting to so apply the molding to the dash that the molding buckled up near the rear end where it came in contact with the stop or screw, and thereby caused the outer edges of the groove to give way at the point where the buckling of the molding occurred. I was thereby prevented from putting this molding entirely on the dash. In both of these experiments the rear end of the sheaths were bruised and battered, caused by the hammering of the mallet in attempting to apply the moldings. I will state that these wooden sheaths had the grooves of the same size and shape of the groove in

the metallic sheath, Peters' patent sheath, which we use all
309 the time for applying moldings to dashes, and the moldings used in these wooden sheaths were the same size and shape as we use all the time, and the dashes to which these moldings were attempted to be applied were of the same average thickness and kind we use and to which we apply moldings every day, so that I know that the moldings I attempted to apply by these wooden sheaths fit the wooden sheaths perfectly, and just as the moldings would have fitted in our iron sheaths. From my experience and these experiments made to-day I am satisfied that such wooden sheaths like

Defendant's Exhibit "Richmond Sheath," of suitable size, and Complainant's Exhibit "Staver's Stick" would not answer the purpose for applying moldings to dashes.

Q. 6. Please examine "Firestone Exhibit No. 1" and "Firestone Exhibit No. 2," which I now hand you, and state whether or not you ever saw either of them before; and, if so, what do they represent.

Mr. Firestone, counsel for complainant, here hands witness exhibits referred to in above question and witness examines same.

H. F. GUERIN,
Notary Public.

A. 6. I have examined exhibits referred to, and I find that they are the same sheaths used by me in my experiments to-day
310 in attempting to apply moldings to dashes. "Firestone Exhibit No. 1" is the sheath, molding, and part of the dash cover is the same one I first experimented with, as described in my last answer, and it has not been altered or changed in any respect since I quit the experiment. "Firestone Exhibit No. 2" is the sheath, molding, and dash I last experimented with, as described in my last answer, and said exhibit has not been altered or changed in any respect since I quit the experiment.

Q. 7. Are you familiar with and do you know the amount of pressure ordinarily required to put a molding onto a dash? And, if so, state what that pressure is.

Ans. 7. I have made frequent experiments to ascertain the amount of pressure required to put moldings on dashes, and from such experiments I find that it requires a pressure of from 800 to 1,000 pounds to put the moldings on the dashes, and in some instances, where the molding would fit the dash more than ordinarily tight, a pressure from 1,200 to 1,500 pounds is required to put such a molding onto a dash.

E. H. MOONEY.

311 Further taking of these depositions hereby adjourned until Wednesday, January 17th, 1883, at 9 a. m.

H. F. GUERIN,
Notary Public and Acting Special Examiner.

WEDNESDAY, *January 17th*, 1883.

Further taking of these depositions now resumed pursuant to the foregoing adjournment.

H. F. GUERIN,
Notary Public and Acting Special Examiner.

Present: Jason W. Firestone, counsel for complainant.

H. F. GUERIN,
Notary Public and Acting Special Examiner.

GEORGE M. PETERS, witness produced by the complainant, being first duly sworn according to law, deposes and says as follows:

Q. 1. State your name, age, residence, and occupation.

A. 1. My name is George M. Peters and 43 years of age; residence, Columbus, Ohio, and by occupation am a manufacturer of dashes and carriages.

Q. 2. Are you acquainted with Wm. Peel, Esq., of the firm of Peel & Elster, manufacturers of dash moldings at Springfield, Ohio?

A. 2. I am.

Q. 3. State whether or not you had a conversation with
312 said Wm. Peel relative to the manufacture by said Peel and for use by his customers of your patented device or sheath for drawing moldings on dashes; and, if yea, state when and where said conversation took place, who was present, and what was said.

A. 3. Yes; Mr. Wm. Peel and I had a conversation in the fall of 1878 in the office of the Peters Dash Company, in the presence of C. D. Firestone and O. G. Peters. Mr. Peel stated at that time that he would like to get the right to make two of my patent sheaths for use by two of his customers, who were then buying dash moldings from him and Elster; that he wanted one of these sheaths for Emerson, Fisher & Co. and one for Lewis Cook. I told him at first that I would not dare to do such a thing; that we expected to sell Emerson, Fisher and Co. and Lewis Cook all the dashes they used, except possibly a few odd-shaped or special sizes, and giving them such a privilege might defeat our business aims. Peel said he thought not; that it would maintain friendly relations between Emerson, Fisher & Co. and Lewis Cook and ourselves, and cause them (Emerson, Fisher & Co. and Lewis Cook) always to favor us, at least as long as they had the benefit of such a privilege from me.
313 Peel also stated that he would do all he could in assisting us in selling dashes to them, and he (Peel) expected to sell Emerson, Fisher & Co. and Lewis Cook moldings for only odd and special sized dashes, which we could not furnish. I told him some opposition dash factory might get hold of these sheaths and injure us. Mr. Peel then said he would guarantee us against that, and that he and Elster would guarantee to return these sheaths to me or my agent at any time when demanded to do so. After consultation with C. D. Firestone and O. G. Peters we concluded it would not injure us if such a favor would secure the co-operation of Peel and Elster and keep up friendly relations between us and Emerson, Fisher and Lewis Cook and assist in securing their dash trade. I then told Mr. Peel if he would guarantee for himself and Elster to deliver to me on demand these two sheaths and mark the sheaths with my patent mark he could make two sheaths—one for Emerson, Fisher & Co. and one for Lewis Cook—for their own use in their own factory. This Mr. Peel agreed to do, in the presence of Mr. C. D. Firestone and Mr. O. G. Peters.

Q. 4. Where was the then office of the Peters Dash Company located?

A. 4. The office in which this conversation took place was then in the new brick building on the southwest corner of Locust and Fair alleys.

314 Q. 5. State whether or not you ever had a conversation with Mr. Peel about the Active Manufacturing Company of Cincinnati, Ohio, using your patent. If so, when and where did such conversation take place.

A. 5. Yes; I had a conversation with Mr. Peel, at Columbus, Ohio, at our factory. It took place shortly after I received a copy of the answer of the Active Manufacturing Co. to my first suit against them, wherein the Active Manufacturing Company claimed they were using a sheath under license from me. I told Mr. Peel he must get the sheaths he loaned to Emerson, Fisher & Co. and Lewis Cook and return them to me. Prior to this I sent my attorney to Springfield to notify Peel and Elster to get these sheaths and return them to me.

Q. 6. State whether or not you are the inventor of letters patent No. 178,463, dated June 6th, 1876, and sued on in this cause; and, if yea, state when you made the invention described and claimed in said letters patent.

A. 6. The invention, in all its details as patented, was not the work of one day, but the gradual work of a year or so, beginning in April, of 1874. After having sustained great loss and trouble in applying moldings in the old way, by driving them on with a hammer,

315 with one or two men to hold the dash during such operation, in April, 1874, the idea came to me of supporting the molding by sliding the molding into a groove in a stick of hard wood and then hammering on the rear end of said grooved stick to force the molding on the dash, and I immediately made the test, but on testing I found that even the hardest wood would batter up, split, and cut out, the outer edges of the groove give way and allow the molding to buckle up, and even though I put — fer-ule on the rear end of the stick and applied screws and iron plates to act as "stops" for the rear end of the molding I could not overcome these difficulties. Still, I continued using these grooved sticks, as best I could, in various forms and shapes for quite awhile, breaking one after another, and even when made of the hardest wood, with fer-ule on rear end, iron plates for stops, and metal-ic strips screwed along the edge of the groove to prevent the edges from breaking out, they would last only a short time, and I could not economically use them, and it was quite awhile before I conceived the idea of making the sheath of iron, for I had been under the impression that it would not do to let the finely-polished, plated, or japan-ed surface of the molding to come in contact with anything but some such

316 substance as wood when sliding it in the groove of the sheath, for the moldings would get scratched or defaced; but I found that I must try an iron sheath with a finely-polished groove, which I did. I found it did not scratch the molding, as I supposed it would. I used this until I battered up the rear end of this wrought-iron sheath by the necessary hammering required to put the molding on the dash. During the summer or fall of 1874 I concluded I must

get some mode of propelling the sheath and molding other than by hammering upon the sheath, so I worked out a sheath with cogs upon it, to be propelled by a cog-wheel, with the dash held in a long wooden vise; but, this not being satisfactory, I found that a hook upon the forward end of the iron sheath drawn by a strap, pulley, and crank worked satisfactory. I made one and made the "stop" adjustable for different lengths of dashes, and this is the same sheath and vise that Mr. McCurley saw in use in May, 1875, in the Iron Buggy Company factory. In applying moldings economically and rapidly I subsequently applied steam power to the pulley, as the work is too severe by hand.

317 Q. 7. Please examine "Firestone Exhibit No. 1" and "Firestone Exhibit No. 2" and state how far, if at all, they represent the experimental sheaths used by you in April, 1874.

Witness here examines exhibits and deposes as follows.

H. F. GUERIN,
Notary Public & Acting Special Examiner.

A. 7. They substantially represent the sheaths I used in 1874 in the manner I have stated.

Q. 8. Was you present at the making of the experiments with "Firestone Exhibit No. 1" and "Firestone Exhibit No. 2;" and, if so, how did the result of said experiments compare with your attempts to use similar wooden sheaths in 1874?

A. 8. I saw the experiments and experienced the same difficulties that Mr. Mooney did in attempting to apply moldings to dashes by such sheaths; but at that time, as I have previously stated, I strengthened some of my wooden sheaths by the use of iron plates screwed to the sheaths to act as a "stop" to the end of the molding and by a strip of metal along on each side of the groove.

And further this deponent sayeth not.

GEORGE M. PETERS.

318 Circuit Court of the United States, Southern District of Ohio.
In Equity.

GEORGE M. PETERS
vs.
THE ACTIVE MANUF'G CO. } 3206.

The defendant will take notice that on Tuesday, January 16th, 1883, the plaintiff above named will take the deposition- of sundry witnesses, at the office of the Columbus Buggy Co., Columbus, Ohio, commencing at 2 o'clock p. m. and continuing from day to day until completed. Said examination will take place before Henry F. Guerin, notary public and acting as special examiner, under the 67th rule, in equity, as amended.

WM. HUBBELL FISHER,
JASON W. FIRESTONE,
Counsel for Complainant.

Received copy Jan. 12th, 1883.

STEM & PECK,
Counsel for Def'ts.

319 STATE OF OHIO, } ss:
Franklin County, }

I, H. F. Guerin, notary public in and for the county of Franklin, State of Ohio, duly appointed and commissioned, and acting special examiner for the taking of these depositions, do hereby certify that C. D. Firestone, Oscar G. Peters, Edwin H. Mooney, and George M. Peters were by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions by them respectively subscribed were reduced to writing by me in their presence and by them subscribed in my presence, and that the depositions were read over to them and they were then again sworn to the statements therein contained; that the said depositions were taken at the time and place specified in the annexed notice for the taking of depositions in this case, and were continued as in said depositions noted and completed on the 17th day of January, A. D. 1883.

That I am neither counsel nor attorney for nor related to either party to this suit; that I am in no way interested in the event of this suit; that the fees for taking these depositions, taxed at $14.00, have been paid by the complainant, and also witness fees for attendance, one day each, amounting to $6.00, have been paid
320 by complainant, together with postage, 60c., and clerk's fee for certificate, 35c.

In testimony whereof I have hereunto set my hand and seal this 17th day of January, 1883.

[SEAL.]

H. F. GUERIN,
Notary Public in and for the County of Franklin & Acting Special Examiner.

THE STATE OF OHIO, } ss:
Franklin County, }

I, Harvey Cashatt, clerk of the court of common pleas, which is a court of record, within and for said county and State aforesaid, do hereby certify that H. F. Guerin is an acting notary public in and for said county, duly commissioned and sworn; that all his official acts as such are entitled to full faith and credit, and that at the time of the taking such acknowledgement he was authorized by the laws of said State of Ohio to take the acknowledgments and proofs of deeds or conveyances for lands, tenements, or hereditaments in such State of Ohio; that the foregoing signature, purporting to be his, is true and genuine, and that the foregoing instrument is executed according to the laws of the State of Ohio.

Witness my hand and seal of said court this 18th day of January, A. D. 1883.

[SEAL.]

HARVEY CASHATT, *Clerk,*
By JOHN J. JOYCE, *Deputy.*

321 And afterwards, to wit, on the 19th day of March, A. D. 1883, came the defendant, by its solicitors, and filed in the clerk's office of the court aforesaid a certain amended answer in this cause, which said answer is in the words and figures following, to wit:

Amended Answer.

United States Circuit Court, Southern District of Ohio. Equity.

GEORGE M. PETERS
vs. } 3206.
ACTIVE MANUFACTURING CO.

And now comes the defendant in the above cause and, leave being had, files this amendment to its answer *nunc pro tunc* by adding thereto the following:

That the said George M. Peters was not the original or first inventor or discoverer of the things patented in said letters patent, but that prior to his alleged discovery or alleged invention thereof the same were known and used by the following persons at the following places: At Binghamton, Broom county, New York, by Joseph P. Noyes and Frederick Yingling, who now reside and may be found at said Binghamton. And this defendant prays as *he* has already prayed.

STEM & PECK,
322 *Counsel & Sol'rs for Def'ts.*

Consent to filing of above and waive oath.
Cin'ti, O., Mar. 19, '83.

WM. HUBBELL FISHER,
Of Counsel for Compl't.

323 And afterwards, to wit, on the 20th day of March, A. D. 1883, came the parties and filed in the clerk's office of the court aforesaid a certain notice and schedule of patents admitted in evidence, which said notice, etc., is in the words and figures following, to wit:

Notice & Schedule of Patents.

Circuit Court of the United States, Southern District of Ohio. In Equity.

GEORGE M. PETERS
vs. } 3206.
ACTIVE MANUFACTURING CO.

The respondent above named will take notice that the complainant will, and hereby does, offer in evidence in the above-entitled cause the certified copies of patents mentioned on the schedule hereunto annexed.

WM. HUBBELL FISHER,
Of Counsel for Compl't.

Service of above accepted.
Cin'ti, O., March 17th, '83.

STEM & PECK,
Sol'rs for Def'ts.

324 *Schedule of Patents for Certain Inventions Relating to Vehicle Dashes.*

Number.	Date.	Invention.	Patentee.
105,362	July 12th, '70	Dash-rail	Noyes & Stratton.
122,996	Jan'y 23rd, '72	Dash-boards	John Curtis.
128,933	July 9th, '72	Dash-rails	H. W. Warner.
132,712	Nov. 5th, '72	Dash-binding	John Curtis.
135,834	Feb. 11th, '73	Dash-rails	Noyes & Stratton.
137,446	April 1st, '73	Dash-rails	C. Cowles & Co.
148,746	March 17th, '74	Dash-boards	Peel & Elster.
149,878	April 21st, '74	Dash-boards	J. M. Munson.
150,341	April 28th, '74	Dash-boards	W. T. Merserean.
151,147	May 19th, '74	Dash-boards	J. Morrison.
153,552	July 28th, '74	Dash-rails	M. Everett, adm'x.
158,182	Dec. 29th, '74	Dash-boards	Peel & Elster.

325 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom the- presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted John Curtis January 23d, 1872, number 122,996, for improvement in dash-boards for carriages.

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 14th day of March, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and seventh.

[SEAL.] E. M. MARBLE,
Commissioner.

326 No. 122,996.

The United States of America to all to whom these presents shall come:

Whereas John Curtis, of Cincinnati, Ohio, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in dash-boards for carriages, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said John Curtis, his heirs or assigns, for the term of seventeen years from the wenty-third day of January, one thousand eight hundred and

eighty seventy-two, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and
327 caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-third day of January, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-six-.

[SEAL.] B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

122,996.

UNITED STATES PATENT OFFICE.

JOHN CURTIS, of Cincinnati, Ohio.

Improvement in Dash-Boards for Carriages.

Specification forming part of Letters Patent No. 122,996, dated January 23d, 1872.

I, John Curtis, of Cincinnati, Hamilton county, Ohio, have invented a new and useful metallic edging or binding for the dash-boards and similar parts of carriages, of which the following is a specification:

My invention consists in applying to the edges of dash-boards, fenders, boots, wings, step covers, and like stiffened work of carriages over a bead previously formed thereon a casing rolled or shaped in
a single piece of sheet metal so as to give to those members
328 a smooth, durable, and elegant finish.

Figure 1 is a perspective view of a portion of a dash-board trimmed with my metallic binding, a portion of the edge of the board being broken away in the drawing to exhibit the details of construction. Fig. 2 is a transverse section on a larger scale through the edge or border of a dash-board having my metallic binding. Figs. 3, 4, and 5 are similar sections, showing modifications of my invention. Figs. 6 and 7 represent tools used in the formation and application of my metallic binding.

A represents a portion of the iron frame of a dash-board, around which frame the customary leathers B B′ are stretched. C is a core or stiffening piece, of wire, rattan, or other suitable material. D is a band or strip of leather, canvas, or other suitable material, which, being folded around the core G, may have its lower edges temporarily pasted to the frame A. E is a bead or binding strip, of sheet metal, which, having been drawn through an eyelet, E, figure C, or otherwise bent into a **C**-form, is, by means of a suitable clamp, G,
Fig. 7, or other means, tightly pressed around the porton C D,
329 so as to assume and retain the form represented and to impart a permanently hard, smooth, and stylish edging to the

dash-board, over which the reins may play without imparting or receiving injury, as is the case with the customary stitched leather border. The parts having been thus applied to each other, the leather portions are further secured by suitable stitching, H.

The above-described metallic border supersedes entirely the comparatively costly and destructible metallic rail which surmounts some dash-boards. My metallic binding may have a gold, silver, nickel, Japan, or other finish to correspond with the other trimmings, and may be advantageously applied to all those leather appendages of carriages which are stiffened on frames, such at fenders, boots, wings, step covers, &c. India-rubber, cloth, or other suitable material may take the place of leather in the above-described uses.

The form or type of my invention here selected for illustration may be varied from in non-essential particulars. For example, the customary leathers B B′, being carried up above the core G and stretched above and below it, as shown in Fig. 3, may receive the metallic binding without the additional leather
330 D, or, in place of the leather D, a sheet of copper (or other suitable metal) D. Fig. 4 may be crimped to the proper form, as shown, and its lower part being brazed or soldered to the frame its upper part may either constitute the beading proper or serve as core for the same. The metal used for D should, of course, be such as to be readily penetrated by the stitching needle while sufficiently stiff to serve as core or beading, as above. Still another modification may have its core formed by crimping the principal leathers B B′, as in Fig. 5.

I claim a- new and of my invention the combination with the internal bead or core C of the metallic binding E, formed in a single piece and applied as herein set forth.

In testimony of which invention I hereunto set my hand.

JOHN CURTIS.

Witnesses:

GEO. H. KNIGHT.

JAMES H. LAYMAN.

(Here follows diagram marked p. 331.)

332 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Peel and Elster March 17th, 1874, number 148,746, for improvement in dash-boards for vehicles.

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 14th day of March, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and seventh.

[SEAL.] E. M. MARBLE.
Commissioner.

333 No. 148,746.

The United States of America to all to whom these presents shall come:

Whereas William C. Peel, of Springfield, Ohio, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in dash-boards for vehicles (he having assigned one-half of his right, title, and interest in said improvement to Justus V. Elster, of Hillsborough, Ohio), *of* description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Peel and Elster, their heirs and assigns, for the term of seventeen years from the seventeenth day of March, one thousand eight hundred and seventy-four, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

334 In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this seventeenth day of March, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the one hundred and ninety-eighth.

[SEAL.]

B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

WILLIAM C. PEEL, of Springfield, assignor of one-half his right to Justus V. Elster, of Hillsborough, Ohio.

Improvement in Dash-Boards for Vehicles.

Specification forming part of Letters Patent No. 148,746, dated March 17th, 1874; application filed March 6th, 1873.

To all whom it may concern:

Be it known that I, Wm. C. Peel, of Springfield, Ohio, have invented certain improvements in metal moldings for dash-
335 boards and other parts of carriages and buggies, of which the following is a specification:

The nature of my invention relates to an improvement in dash-boards for buggies and vehicles of all kinds, and it consists in the manner of attaching the metal molding to the top of the dash-

board by slipping it under a row of heavy stitching and then securing it in place by a screw, as will be more fully described hereafter.

Figure 1 is a side elevation of my invention. Fig. 2 is an enlarged view of a section of the same. Fig. 3 is a vertical cross-section of the upper edge.

a represents the metallic frame, over which the leather is placed and secured in position by the stitching B. The edge of the leather extends a suitable distance above the top of the frame *a*, and has a row of very heavy stitching, 2, run along its top, under which the edges of the metal tube C catch, so as to prevent its being raised upward, as shown in Fig. 3. A screw, E, is then screwed into the leather at each end, so as to prevent any endwise movement of the tube.

These stitches and screws hold the molding firmly and securely in place, and are much cheaper and simpler than any devices heretofore used.

336 I am aware that the use of metal molding for the protection of dash-boards is not new, and therefore do not claim its use broadly; but

But what I do claim as new and patentable is—

The combination of a metal molding, C, retained in its place upon the edge of a dash-board by a row of stitching, D, under the molding, all combined substantially as set forth.

WM. C. PEEL.

Witnesses:
WICK BRETNEY.
WM. H. HARRISON.

(Here follows diagram marked p. 337.)

338 UNITED STATES PATENT OFFICE.

GEORGE M. PETERS, of Columbus, Ohio.

Improvement in Tools for Attaching Sheet-Metal Moldings.

Specification forming part of Letters Patent No. 178,463, dated June 6th, 1876; application filed March 7th, 1876.

To all whom it may concern:

Be it known that I, George M. Peters, a resident of the city of Columbus, in the county of Franklin and State of Ohio, have invented certain new and useful improvements in sheaths or holders for applying moldings to the tops of carriage dash-boards, of which the following is a specification:

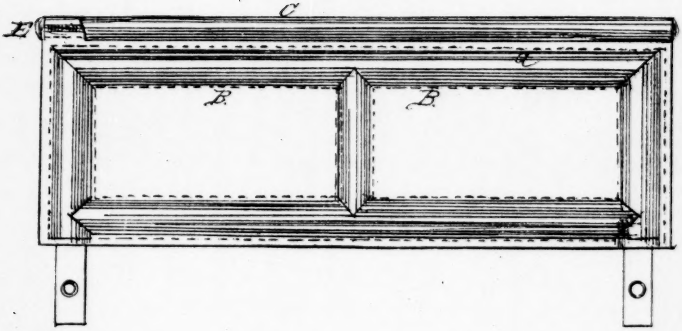
My invention comprises a peculiarly-constructed sheath or holder, wherewith the ornamental molding on the top of carriage dashes may be applied in the most expeditious manner and without bending or buckling or otherwise injuring or marring either said molding or its supporting dash-board.

W. C. PEEL.

Dash-Boards for Vehicles.

No. 148,746. Patented March 17, 1874.

fig 1.



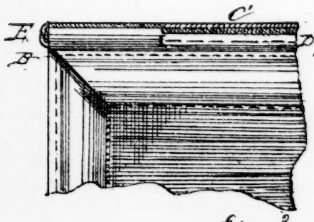


fig. 2

fig. 3.

No. 328 Peters v. Active Mfg Co. p. 337

Witnesses.
Wm. Brewer.
Wm H Harrison

Inventor.
Wm C Peel.

In its preferred form said sheath consists of a two-part holder or receiver connected together with bolts and washes and provided with a longitudinal groove or channel of such size and shape
339 as to readily inclose the molding that is to be applied to the upper edge of the dash, a key or other suitable stop being fitted within the sheath to prevent the molding slipping through said longitudinal groove when the device is in use.

The sheath is rendered capable of carrying moldings of various lengths and sizes by an arrangement of adjusting devices whose details of construction will be hereinafter more fully explained.

In the accompanying drawing, forming part of this specification, Fig. 1 is a perspective view of a two-part sheath in an inverted position, the middle portion and rear end of the device being broken away. Fig. 2 is a perspective view of the molding detached from sheath. Fig. 3 is a plan showing the molding located within the sheath Fig. 4 is a longitudinal section through the rear end of the sheath with a screw stop for the molding to bear against. Fig. 5 is a transverse section at the line *x x*, showing the molding incased within the sheath; and Figs. 6 and 7 represent modifications of the holder.

A and B represent two metallic bars of any appropriate size and having their lower outer edges slightly beveled off at *a* and *b*. These bars are maintained in a parallel position with reference to
340 each other by means of bolts or screws C and washers of fillings D. Instead of washers and bolts or screws C the bars may be maintained in parallel position and separated or brought nearer together by means of right-and-left screws, the right-hand thread of said screw engaging a female screw in one bar and the left-hand thread engaging a female screw in the other.

The bar A has a longitudinal groove, E, formed along its inner surface and near the lower edge of said bar. E′ is a precisely similar groove made in the other bar B, and when the two members, A B, of the sheath are joined together the grooves E E′ form a channel that is approximately circular in its transverse section.

F represents a hook, shackle, or link pivoted to the front end of the sheath and guttered at *f* to avoid contact with the upper edge of the dash.

The bars are furnished with undercut notches *g g′* to receive a detachable key, G, which latter serves as a stop or abutment for the rear end of the molding to rest against. A series of similar notches may be made in the bars A B *as* such distances from the front end of the sheath as will correspond with the various lengths of moldings; or, if preferred, the notches and key may be dispensed
341 with, and a screw, H, may be arranged for the molding to bear against, as seen in Fig. 4. This screw may be adjusted out or in to agree with the length of molding.

The advancing end of the sheath is rounded off at I, so as not to tear up the leather coverings of the dash while the molding is being applied. The molding consists of a sheet-metal tube, J, having a longitudinal slot or parting, K, and a flaring or trumpet-mouthed

end, L. This trumpet mouth is located at the forward end of the molding.

As represented in Fig. 7, the sides of the molding M are straight and have an outward flare to top of said molding, being somewhat crowning. This illustration shows a three-part sheath, the two outer bars N N′ being secured to the central member O by right and left hand screws *n n′* and nuts P. Fig. 6 represents the sheath as made of a single piece of metal or other suitable material.

Previous to using the sheath the key G is first inserted in the notches *g g′* at such a distance from the end I as will correspond with the length of molding J, which latter is then slid into the groove E E, the rear end of said molding being brought in
342 contact with the vertical edge of said key. When thus located within the sheath the flaring mouth L of the molding has a slight projection beyond the chamfered end I of the bars A B, as represented in Fig. 3. The carriage dash is then held perfectly rigid, and the upper margins of the coverings of the same are inserted in the flaring end L of the molding, after which any suitable power is applied to *be* hook F to draw the sheath along the top of said margins or projections. As the sheath advances the flaring mouth serves to conduct the leather margins into the slot K of the molding, and as the grooves E′ E′ prevent any radial distension of the tube J, it is evident that the molding is caused to embrace said margins in the most uniform and secure manner. After the molding has traversed the entire length of the dash the sheath can then be retracted, thereby leaving the tube J in its proper position upon the dash, the flaring end L being either filed off or else disposed of in any other suitable manner. During the progress of the sheath along the top of dash the molding is impelled forward by the key G, and consequently no strain whatever is brought to bear upon the flaring end L of the tube.

As a considerable degree of force is required to anchor the molding J securely to the leathern margins, it is evident that the driving action of key G would have a tendency to buckle said tube,
343 but this defect is obviated by making the channel of the sheath of such capacity as to allow a pretty snug fit of the molding within it.

When a longer molding is to be applied to a dash the key G is driven out and inserted in another set of notches nearer the rear end of the sheath, or the same results may be effected by causing the molding to abut against the end of screw H, the latter being adjusted either out or in, so as to agree with the length of molding that the sheath is to carry. The width of channel E E′ may be increased to receive a molding of greater diameter by removing washers or filling and inserting thicker ones in their place or by turning the right and left hand screws where the latter are employed.

It is preferred to make the s-eath of two pieces on account of the facility of grooving them, but it is evident the holder may be made of a greater or less number if desired. (See Figs. 6 and 7.) It is also preferred to have the sheath embrace the molding as completely as possible, so as to bring the lower edges of the bars A B near the

parting K, and thereby prevent any spreading of the tube at said slot, but if the tube is sufficiently stiff to prevent such spreading the sheath need not surround the molding so completely. This modified form of sheath is shown in Fig. 6.

344 Furthermore, the sheath may be composed of wood lined with a metallic bushing. It is evident that this form of sheath may be advantageously employed for attaching sheet-metal molding or tubes to various articles, and I reserve the right to use it for any and every purpose that it is capable of.

What I claim as new, and desire to secure by letters patent, is—

1. A sheath for applying metallic moldings, said sheath being furnished with a stop for advancing the molding, all substantially as and for the purpose specified.

2. The within-described sheath for applying metallic moldings, said sheath being furnished with recesses *f'*, *g'*, and a key, G, or their equivalent stops, as and for the purposes explained.

3. A sheath composed of two grooved bars A E, B E', bolts or screws C, and washers D, whereby the sheath is rendered capable of adjustment to contain moldings of different diameters, as herein set forth.

4. The combination of bars A E, B E', and guttered hook or shackle F *f*, for the object stated.

GEORGE M. PETERS.

Attest: E. P. JENKINS.
C. D. TRIESTONE.

(Here follows diagram marked pp. 345, '6.)

347 And afterwards, to wit, on the 7th day of October, A. D. 1884, an entry was made upon the journal of said court in said cause, which said entry is in the words and figures following, to wit:

Decree. V. 490.

GEORGE M. PETERS
vs.
THE ACTIVE MANUFACTURING COMPANY. } In Equity. 3206.

This cause having come on to be heard on the bill of complaint, answer, replication, proofs, and argument of counsel, and the court being fully advised in the premises, doth hereby order, adjudge, and decree that the bill of complaint be, and the same is hereby, dismissed at complainant's cost; whereupon the said complainant, by his counsel, prays an appeal to the Supreme Court of the United States, and asks the Court to fix the amount of the appeal bond, and the Court do allow said appeal and fix the amount of the appeal bond at five hundred dollars ($500.00).

And afterwards, to wit, on the 28th day of October, A. D. 1884, came the complainant and filed in the clerk's office of the court aforesaid a certain appeal bond in this cause; which said ap-
348 peal bond is in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States, Southern District of Ohio.

GEORGE M. PETERS
vs.
ACTIVE MANUFACTURING COMPANY.

Know all men by these presents that we, George M. Peters, as principal, and G. H. Lounsberg, as surety, are held and firmly bound unto the Active Manufacturing Company in the sum of five hundred dollars, to be paid to the said Active Manufacturing Company, its executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 28th day of October, 1884.

Whereas the above-named George M. Peters desires to take an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

349 Now, therefore, the condition of this obligation is such that if the above-named George M. Peters shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

G. H. LOUNSBERG. [SEAL.]

Sealed and delivered in the presence of—
J. D. KILMER.
C. R. NEVIN.

The above security is approved.

GEORGE R. SAGE,
District Judge of the United States, S. D. Ohio.

And afterwards, to wit, on the 7th day of February, A. D. 1885, an entry was made upon the journal of said court in said cause, which said entry is in the words and figures following, to wit:

J'rn'l Entry. W. 40.

GEORGE M. PETERS
vs.
THE ACTIVE M'F'G CO. } In Equity. 3206.

Whereas the above-named complainant has this day in open court duly made application for leave to file a supersedeas bond in
350 the matter of his appeal to the United States Supreme Court, and has presented a bond in the sum of $500.00 for all damages and costs, duly executed by the complainant and Gilbert H. Lounsberg, to the respondent: Now, therefore, it is ordered that

the said bond be, and the same is hereby, accepted and approved, and that said bond be filed, and that said bond be substituted for the former appeal bond executed by said Gilbert H. Lounsberg only, and heretofore filed in this suit.

And afterwards, to wit, on the 7th day of February, A. D. 1885, came the complainant and filed in the clerk's office of the court aforesaid a certain supersedeas bond in this cause, which said bond is in the words and figures following, to wit:

Supersedeas Bond.

Circuit Court of the United States, Southern District of Ohio.

GEORGE M. PETERS *vs.* ACTIVE MANUFACTURING COMPANY.

Know all men by these presents that we, George M. Peters, as principal, and Gilbert H. Lounsberg, as surety, are held and
351 firmly bound unto The Active Manufacturing Company in the sum of five hundred dollars, to be paid to the said the Active Manufacturing Company, its executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 4th day of February, 1885.

Whereas the above-named George M. Peters has taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named George M. Peters shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

GEORGE M. PETERS. [SEAL.]
GILBERT H. LOUNSBERG. [SEAL.]

Sealed & delivered in presence of—
O. G. PETERS,
C. M. PETERS,
As to George M. Peters.

Sealed and delivered in presence of—
J. D. KILMER,
T. B. WRIGHT,
As to Gilbert H. Lounsberg.

352 The above security is approved.

GEO. R. SAGE.
Judge of the United States, S. D. Ohio, Sitting as Circuit Judge.

353 THE UNITED STATES OF AMERICA, } *ss:*
Southern District of Ohio, Western Division, }

I, B. R. Cowen, clerk of the circuit court of the United States for said district and division, do hereby certify the foregoing to be a true and correct transcript of the record and proceedings in the cause wherein George M. Peters is complainant and the Active Manufacturing Company is defendant as fully and completely as the same remain on file and of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 5th day of March, A. D. 1885, and in the 109th year of the Independence of the United States of America.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

Attest: B. R. COWEN,
Clerk U. S. Cir. C'rt, S. D. O., W. D.

354 THE UNITED STATES OF AMERICA, *ss:*

To Active Manufacturing Company, defendant, Greeting:

Whereas George M. Peters hath lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of Ohio made in favor of you, the said Active Manufacturing Co., and has filed the security required by law: You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Cincinnati, in the sixth circuit, this 7th day of February, in the year of our Lord one thousand eight hundred and eighty-five.

GEORGE R. SAGE,
District Judge of the United States, S. D. Ohio,
Sitting and Acting as Circuit Judge.

355 [Endorsed:] 164. 2, 10, '85. Geo. Monteith, sec'y. United States circuit court, western division. No. 3206. George M. Peters *vs.* Active M'n'f'g Co. Citation to appellee. Filed February 12th, 1885. B. R. Cowen, clerk.

Rec'd this writ at Cincinnati, O., Feb. 10th, 1885, and served the same in Cincinnati, O., as follows: On the within-named Active Manufacturing Company by delivering a true copy hereof to Geo. Monteith, secretary of said company, personally, Feb. 11th, 1885.

LOT WRIGHT, *U. S. M.*,
By C. E. TWIFORD, *Dep.*

Service	2 00
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Endorsed on cover: S. Ohio C. C. U. S. No. 328. George M. Peters, appellant, *vs.* The Active Manufacturing Company. Filed October 3, 1885.

Office Supreme Court, U. S.
FILED.
JAN 16 1889
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 65.

George M. Peters,

Appellant.

vs.

The Active Manufacturing Company,

Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR APPELLANT.

BENJAMIN BUTTERWORTH,
Of Counsel for Appellant.

JUDD & DETWEILER, PRINTERS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 65.

GEORGE M. PETERS, APPELLANT,

vs.

THE ACTIVE MANUFACTURING COMPANY,
APPELLEE.

Appeal from the District Court of the United States for the Southern District of Ohio.

BRIEF FOR APPELLANT.

This case comes into this Court on appeal from the circuit court of the United States for the southern district of Ohio. The invention at issue is a machine for putting metallic moldings on the tops of carriage dashes. These moldings are of an inverted ∩ shape in cross-section, and when slid over the top of the dash protect the leather of the dash from abrasion by the dragging of the reins back and forth over its top. The moldings were introduced to the carriage-building trade about the early part of the year 1874 (Rich-

mond, Q. 4, page 41, Transcript of Record; Emerson, Q. 3, page 45; Fisher, Q. 6, page 50, &c.); but great difficulty in applying the molding to the dash was encountered (Emerson, Q. 7, page 45; Fisher, Q. 9, page 51; Flecksteiner, Q. 34, page 65; McCurley, QQ. 10, 11, 15, 32, and 37, page 75; Huber, Q. 15, page 88; Dornseifer, Q. 15, page 92; Glenn, Q. 19, page 108; Scollins, Q. 4, page 110; Morrissey, Q. 5, page 113; Schoenberger, QQ. 7 and 8, page 117). The resistance encountered in driving on the moldings was so great that they were bent and battered in the operation to a degree that rendered them worthless. The difficulty was such a one as greatly retarded the adoption of this new idea of metallic moldings for dashes for several years. The attention of practical men skilled in the art was directed to the difficulty, and probably several abortive attempts were made to design an apparatus which should remove the trouble. (Noyes, Q. 17, page 25; Emerson, Q. 7, page 45.)

George M. Peters was among the first to bend his inventive faculties to the removal of this difficulty which was blocking the development of the art. He brought out an invention by the use of which 350,000 moldings were put on as many dashes in four years (Mooney, question 4, page 126). That invention, being the one here in issue, was patented with all diligence. The Active Manufacturing Company soon began using machines embodying that invention in violation of the patentee's right (Testimony of Hackman, pages 10 to 16; Snellen, pages 16 to 18; Firestone, pages 19 and 20; Peters, page 20). A bill of complaint was brought, and dismissed by the circuit court on the ground that the patent was invalid, the invention having been anticipated by an alleged prior machine used by one Noyes for putting moldings on the backs of combs, and therefore this appeal is brought to this Court.

Specification of Errors.

The points of the decision of the court below on which this appeal is taken are the following:

1st. The court below erred in holding that there was no infringement of the third claim, and that, therefore, said third claim need not be considered.

2d. The court below erred in holding that "the respondent's evidence establishes that, as early as September, 1867, Joseph P. Noyes, a manufacturer of combs, at Binghampton, New York, used a machine for putting moldings on combs," which said machine is alleged to anticipate claims 1 and 2 of the patent in suit.

3d. The court below erred in holding that "there is nothing more in the sheath patented to the complainant than an adaptation of the sheath used at Binghampton to the application of moldings to carriage dash-boards—an adaptation which would have occurred to a skilled mechanic without the exercise of the inventive faculty."

THE PATENT IN SUIT.

Suit was brought on patent No. 178,463, granted to George M. Peters, of Columbus, Ohio, June 6, 1876, upon an application filed March 7, 1876. The invention covered is a machine for forcing metallic moldings onto the top of wagon dashes. It consists of a sheath made in two parts, bolted together, and slit at one side and having an adjustable stop against which the ends of the moldings abut as they are slid into the sheath. The object of the invention is to render possible the application of the great power necessary to force the molding onto the dash. The adjustable stop is an important part of the invention. The moldings should protrude a short distance beyond the sheath, and as they are of different lengths this stop must be adjustable to enable each molding, no matter what its length, to protrude just the right distance beyond the end of the sheath. (See specification of patent in suit, page 140, lines 38 to 46, printed Transcript of Record; McCurley's testimony, question 41, page 82.)

The claims infringed are:

(1.) A sheath for applying metallic moldings, said sheath being furnished with a stop for advancing the molding, all substantially as and for the purpose specified.

(2.) The within-described sheath for applying metallic moldings, said sheath being furnished with recesses *f' g'* and a key, G, or their equivalent stops, as and for the purpose explained.

(3.) A sheath composed of two grooved bars, A E B E', bolts or screws, C and washers, D whereby the sheath is rendered capable of adjustment to contain moldings of different diameters, as herein set forth.

The defenses insisted upon are:

(1.) Want of invention.

(2.) Want of novelty.

(3.) Non-infringement of the third claim.

It is not necessary to waste the Court's time in arguing the question raised by the first defense. If it were to prevail in this case ninety-five per cent. of all the patents now in force would be invalidated. The testimony of witnesses on both sides shows that this device overcame a great difficulty in the art—a difficulty which was known to many skilled workmen, while its successful solution evidently occurred to none but to the inventive mind of this appellant and patentee. (Noyes, question 17, page 25; Staver, question 3, page 57; Flecksteiner, question 34, page 65; McCurley, questions 10, 11, 15, 32, 37, page 75 and following; Huber, question 15, page 88; Dornseifer, question 15, page 92; Glenn, question 19, 20, page 108; Scollins, question 4, page 110; Morrissey, question 5, page 113; Schoenberger, questions 7 and 8, page 117; Firestone, rebuttal testimony, question 8, page 123; George M. Peters, questions 6, page 130.) It is hardly reasonable to suppose that a device that did not occur to one out of all these workmen, when laboring under the difficulties described, should be lacking in invention, especially when after its invention by this appellant it was so soon pirated. Unless Mr. Peters had set his inventive faculties at work the whole trade of carriage-makers might still be driving moldings on with a mallet.

In support of the second defense—of want of novelty—two cases of prior use are alleged.

THE RICHMOND STICK.

The first of these, the device represented by the "Exhibit Richmond Stick," has its existence dated from and after the middle of May, 1874 (Richmond, cross-questions 19 and 20, page 42), by some rather uncertain testimony, while the appellant in this case conceived the broad idea of his invention in April, 1874 (deposition of G. M. Peters, question 6, page 130), a month before the Richmond stick began its alleged existence, and as he followed up the invention with diligence (deposition of C. D. Firestone, question 8, page 123)

he is entitled to that date and the alleged subsequent use of the Richmond stick by others can in no way defeat appellant's rights.

Furthermore, the supposed existence of the device represented by the "Exhibit Richmond Stick" is testified to by five persons. Their testimony differs materially upon important points. Of the five witnesses the first, Richmond, is a bitter enemy of the patentee (McCurley, question 34, page 80. Two others, Emerson and Fisher, were members of a rival firm of carriage-makers, and had, moreover, been somewhat roughly handled on account of their action in regard to their betrayal of the trust imposed on them in the matter of a machine loaned them by permission of the patentee, Peters. The other two, Staver and Flecksteiner, were in the employ of Emerson and Fisher at the time of their testifying. Flecksteiner was only thirteen or fourteen years old at the time about which he testified. His pretensions that he was doing this confessedly difficult work, which, in the language of the witness McCurley, "was considered quite a trick or feat" (McCurley, question 11, page 75), are successfully refuted by a number of witnesses. (Glenn, question 21, page 108; Scollins, question 15, page 111; Morrissey, question 10, page 114; Schoenberger, question 13, page 118.)

The testimony of these five must give way before that of eight other men, experienced carriage-builders and unbiased witnesses, McCurley, Huber, Dornseifer, Grear, Glenn, Scollins, Morrissey, and Schoenberger), who had the means of knowing whereof they spoke. The full and somewhat wearisome cross-examination of these witnesses only made it clearer that no such device as that illustrated by "Exhibits Richmond or Staver Stick" was ever used as claimed, and that the circumstances were such that it could not have been used without their knowledge.

But if such a device as the "Richmond Stick" was ever used and it antedated the Peters invention, which it did not, it will be observed that it did not anticipate claim 2 of the

patent here in suit, as it had no adjustable stop (Richmond, question 11, page 41), and it was incomplete and unfitted for the work for other reasons (rebuttal testimony, Firestone, questions 10 and 11, page 123; Mooney, questions 5 and 6, page 126; George M. Peters, question 8, page 131); so that it cannot invalidate any of the claims of this patent. At best it was but an experiment.

"It is freely admitted that the patent of an originator of a complete invention cannot be avoided by proof of any number of incomplete and imperfect experiments made by others at an earlier date. This is true, though the experimenters may have had the idea of the invention, and may have made partially successful efforts to embody it in a practical form." (Wood Paper Patent, 23 Wall., 566.)

"The testimony of witnesses as to the practicability of alleged prior devices is incredible where a test of reproduction of those devices showed them to be practically inoperative." (American Bell Telephone Company *vs.* People's Telephone Company, 34 O. G., 561.)

"He is the first inventor and entitled to the patent who, being an original discoverer, has first perfected and adapted the invention to actual use." (Whitely *vs.* Swayne, 7 Wall., 685.)

Following are a few of the more prominent points in the testimony relating to the Richmond device:

Richmond (questions 42 and 43, page 44) says there were from 1,200 to 1,500 moldings put on with his sheath. Staver (question 36, page 62) puts it at 5,000. Flecksteiner (questions 21 and 22, page 64) says that for four or five years from 75 to 100 moldings a week were put on with this stick, or 15,000 in all, at his lowest estimate. Actual experiment showed that not one molding could be driven on without splitting the stick. (Rebuttal testimony, Firestone, questions 10 and 11, page 123; Mooney, questions 5 and 6, page 126; George M. Peters, question 8, page 131.)

Emerson's testimony (questions 8 and 11, page 46) proves that if the Richmond stick ever existed it was nothing more than an unsuccessful experiment.

Emerson (questions 15 and 16, page 46) Richmond (ques-

tion 29, page 43) Staver (question 8 to 11, page 58) are all at logger-heads as to the matter of the stop in the Richmond sheath.

Fisher (question 45, page 54) flatly contradicts Richmond (question 8, page 41) as to the ferrule on the supposed sheath.

Fisher (questions 53, 54, and 55, page 55) even when aided by suggestive interrogatories, is unable to tell how the Richmond sheath was used.

McCurley (question 19, page 76) distinctly remembers the time he first saw a machine of this kind (a Peters machine), and would have evidently remembered equally well the supposed Richmond stick if there had been any such in existence at the time and place alleged.

McCurley (question 32, page 80) proves that at a subsequent date to the making the alleged Richmond stick Richmond knew nothing of any such device; but, in common with others who saw the Peters invention at the time, he (Richmond) regarded it as a good thing and a new idea. His testimony (question 37, page 81) shows the great demand for a machine like this—*e.g.*, if Richmond's alleged device had actually existed and been operative it would have been instantly and widely adopted.

NOYES' MACHINE.

The existence of the second alleged anticipatory device, the Noyes' machine, "Defendant's Exhibit C," is supported by two witnesses, Noyes and Yingling (pages 23 to 29, Transcript of Record) and drawing, "Exhibit C," showing an incompleted and inoperative device. This testimony is fully met by four other witnesses (Knapp, Newman, Coyle, and McAuley, pages 69 to 73, printed Record), who worked in the factory where the machine was supposed to be used, did the work it was supposed to do, and who testify that the said work was always done in an entirely different way. Knapp is the machinist who, according to Noyes' testimony (question 36, page 27), helped make the machine. He swears (Knapp, questions 6 and 7, page 69) that he never saw or made such a machine. In accordance with the ruling of this Court in Cantrell *vs.* Wallick, 12 Fed Rep., 790, where

two witnesses as to alleged prior use were similarly discredited by four others having knowledge in the premises, this testimony should be thrown out.

Counsel for the appellee object to the admission of the depositions of Knapp, Newman, Coyle, and McAuley on the ground of insufficient notice. Three days' notice was given. In these days of railroad travel three days would seem a sufficient time to get from Cincinnati, Ohio, to Binghampton, N. Y., and "all that is required by the rule of court is that the notice shall be sufficient to afford the party an opportunity to cross-examine the witness" (Allen *vs.* Perkins, 17 Pickering Mass. Rep., 369; Vinal *vs.* Burrill, 16 *id.*, 401; McGinnis *vs.* Association, 12 Grattan Vir. Rep., 602). Three days' notice was also more than sufficient to meet the requirements of the generally accepted rule that the adverse party shall not be required to travel nights, Sundays, or holidays to attend the examination. As the counsel for appellee elected to stay away and object to the depositions, the natural inference is that they knew the importance of the rebutting testimony to be taken and the impossibility of shaking it on cross-examination.

NOYES' MACHINE NOT IN EVIDENCE.

Another point bearing on the testimony of Noyes is the failure to put the machine itself in evidence. He testifies (question 15, page 25) that it was still in use (though his workmen, Coyle, Loomis, and McAuley, never saw it or heard of it). It was small and easily handled. Why was it not produced? Why was this Court compelled to rest its opinion as to the existence of this machine and its similarity to the subject-matter in issue on an incomplete reproduced sketch, insufficiently described, inoperative in design?

That the drawing, "Exhibit C," does not show the parts necessary to render the device operative is evident on inspection. Noyes testifies (question 8, page 24): "L, K, M,

and H (are) the lever and connecting parts by which E and B is operated."

There is no part "K," but it is presumed the pin "R" is meant. The lever "L" must have a fulcrum connected with the bed "A" of the machine. No provision for such a fulcrum is shown. Moreover, a simple, rigid fulcrum will not suffice. It must have a capacity for movement to and from the body "A" as the slide "B" moves back and forth and compels the lever "L" to assume positions of varying angularity to the bed piece "A." Unless the fulcrum of the lever "L" has such capacity for to-and-fro movement the follower "B" would bind and stick before it moved an inch.

Counsel for appellee will doubtless explain that "any one could supply the necessary elements of mechanism omitted from the drawing;" to which the obvious reply is that a bright mechanic, *having the Peters patent and the knowledge of just what was wanted before him, might* "supply" *all* the elements necessary for half a dozen machines which the ingenuity of counsel might twist into a semblance of anticipation of that patent (Woosted *vs.* Blake, 22 O. G., 732), but that this "supplying" process, on the witness stand, does not meet the rigid requirements of the rule laid down by this Court as to the evidence necessary to establish the defense of prior use.

Measured by the just rule fixed by this Court in Coffin *vs.* Ogden, 18 Wallace, 120, cited and approved since, the defense of prior use is not established by the testimony produced. It is most respectfully submitted that the said testimony falls far short of meeting the reasonable requirements of the rule laid down in the cases cited, even if the device referred to be admitted to be anticipatory in character; but is it?

NO ANTICIPATION OF THE PATENT IN SUIT.

It is again respectfully submitted that "Defendant's Exhibit C" is not an anticipation of the patent in suit. Attention is called to Noyes' testimony (questions 24 to 27, page 26) which shows that he did not consider it a machine capable of application to the putting on of such dash moldings or to any other use than the special one for which he claims to have designed it.

Even when persons specially engaged in an effort to put moldings on dashes saw the Noyes "comb-driver" it suggested to them nothing for their purpose (Noyes, question 17, page 25). Evidently the dash-buying public would have received no benefit or beneficial suggestion from the Noyes machine to this day, had it been ever so widely known.

From 1867 to 1882 the Noyes machine is alleged to have been operated in the full view of the public, and no one looking at it said, "Something working on that principle might be used for putting moldings on dashes."

In sharp contrast to this is the fact that when the Peters machine was independently invented it immediately attracted the attention of carriage-builders, and three hundred and fifty thousand dash moldings were put on by its use in four years.

Does not this indicate that the Peters machine was a valuable invention *over* the Noyes machine, supposing that that doubtful contrivance ever existed?

Why, therefore, should the doubtful existence and still more doubtful utility, for the purpose under discussion, of the alleged "comb-driver" shut out this appellant from receiving the protection due him as a return for the great and unquestioned benefit which his invention has conferred upon manufacturers and users of carriages.

The purposes and objects of this invention and of the alleged Noyes machine are so widely different that if the metal sheaths on the backs of combs were not called mold-

ings the idea that this invention is the result of a double use of the Noyes apparatus would never have been broached in this case. The connection is solely the result of a similarity in names, not in things.

The *purpose* of this invention is to provide a means for driving a long molding onto a dash under great pressure—1,200 to 1,500 pounds (Mooney, question 7, page 128, printed Record). The *object* of this invention is to render possible the application of this pressure without bending the molding. The sole *object* of the Noyes machine was to quickly insert the short comb in its three-inch molding, to keep the comb and molding centered and in line one with the other. There was, of course, little or no tendency for the molding to bend. (Noyes, question 35, page 27.)

If once started straight the comb molding slips easily over the smooth incompressible comb back, and they slide over one another without it being necessary to taper the end of one or flare the mouth of the other.

The sole difficulty was in getting the comb and the molding in line so that the axis of the one would coincide with the axis of the other.

A machine such as that described by Noyes would accomplish this. The molding would fit into the groove C, of larger diameter. Its inside surface would then be flush with the surface of the groove D, of smaller diameter, and the comb would slide with the slightest pressure from one to the other without catching or sticking anywhere.

No such action is required of the dash and dash molding. There the difficulty is one arising from the great pressure necessary.

The dash molding must be forced over the compressible leather of the dash. To do this the molding is made with a trumpet mouth (see pages 139 and 140 of printed Record). The sheath forming this invention must be cut away or "rounded off at I so as not to tear up the leather coverings of the dash while the molding is being applied" (last para-

graph, page 139, printed Record), and also to leave space for the "flaring or trumpet mouth." There is nothing of this kind in the alleged Noyes machines for putting moldings on combs. There two continuous slots of unequal diameter run together. A molding with a flaring or trumpet mouth could not be applied by the Noyes machine. The several elements in the Peters device which make it available for use in putting the moldings on dashes are wanting in the device cited as anticipating, and this makes the patentable difference between the two—the difference between failure and success.

Owing to the existence of this trumpet mouth of the molding and the necessity of guiding it below the stitching on the dash (McCurley, questions 25 and 41, page 82) it is necessary in appellant's invention and in all similar machines for the same purpose that there should be an adjustable stop (page 139, printed Record, next to last paragraph) in order that moldings of different lengths may be applied and still have their flaring ends protrude just the necessary distance beyond the end of the sheath (page 140, printed Record, next to last paragraph, McCurley, question 41). This feature is brought out and included in the combination in claim 2, which is—

"The within-described sheath for applying metallic moldings, said sheath being furnished with recesses *f' g'* and a key, G, or their equivalent stops, as and for the purpose explained."

There is no adjustable stop in any of the alleged anticipatory devices, neither in the Noyes machine nor the Richmond stick.

Another point in which the Peters machine differs from both the alleged anticipatory devices is in having the sheath made in two parts, so that they are connected together by bolts and can be adjusted toward and from each other to accommodate moldings of different diameters. This is spe-

cifically set out in claim 3 of the patent in suit, which reads as follows:

(3.) A sheath composed of two grooved bars A E B E′, bolts or screws C, and washers D, whereby the sheath is rendered capable of adjustment to contain moldings of different diameters, as herein set forth.

No provision for adjustment is shown in the Noyes machine or the Richmond stick.

The points of difference between the Peters invention and the devices alleged to anticipate it may be summarized as follows:

(1.) Total difference in purpose and object.

(2.) Total difference in organization of apparatus.

(3.) In adjustability of stop in sheath.

(4.) In adjustability of sides of sheath.

(5.) In provision for application of moldings with "trumpet mouths."

Moreover, the numerous peculiarities of construction set out in the specification of appellant's patent are read into the claim by the words "the within-described sheath;" and—

"Where the claim follows the description of the invention it may be construed in connection with the explanations contained in the specifications, and where it contains words referring back to the specifications it cannot be properly construed in any other way." (Curtis on Patents, 3rd ed., 225–227, cited with approval by this Court in Seymour *vs.* Osborne, 11 Wall., 516; Brooks *vs.* Fisk, 15 How., 215, and Bates *vs.* Coe, 98 U. S., 31.)

In view of all this it would seem that the rule laid down in the opinion of this Court in The Illinois Central R. R. Co. *vs.* Turrill (94 U. S., 695) should apply: "Between this,"

the alleged anticipatory device, " and the Cawood (complainant's) machine there are points of resemblance, but there are also substantial differences. The purposes and objects sought to be accomplished by the machines are entirely unlike. It is always of importance to consider the object an inventor of a machine had in view, because thus the operation of its different parts and the functions performed by each can be better understood." As has been pointed out, the object of the Noyes machine and that of the patentee's machine are different. The " points of resemblance " are principally in names.

By an omission of the draftsman the second " recess " *f'* is not shown in the drawings of the patent, but the said recesses are so fully described in connection with the idea of adjustability in the specification (lines 8 to 10 and lines 38 to 46, page 139, lines 9 to 11, and lines 38 to 46, page 140, printed Transcript of Record) that this together with the use of the plural form in the claim, and the inclusion of the " equivalent stops " or means of adjustment (the screw H, shown in figure 4 of the patent drawings and fully described) should cause this claim to be construed as covering a sheath such as within described, " with adjustable stops for the purposes explained " *ut res magis valeat quam pereat.*

" In construing patents it is the province of the courts to determine what the subject-matter is upon the whole face of the specification and the accompanying drawings." (Curtis on Patents, section 222, cited by the court in Bates *vs.* Coe, *supra.*)

WHAT CHANGES WILL CONFER PATENTABILITY.

Admitting the existence of the device referred to as the Noyes machine, it will be seen that the Peters device is such a modification or " improvement " of it for a new use as to presuppose invention. In the language of Judge Clifford in Bray *vs.* Hartshorn (1 Cliff., 538):

"Particular changes, however, may be made in the construction and operation of an old machine, so as to adapt it to a new and valuable use not known before and to which the old machine had not been and could not be applied without these changes; and under these circumstances and conditions, if the machine, as changed and modified, produces a new and useful result, it may be patented and upheld under the existing laws. (Losh *vs.* Hayne, Web. Pat. Cases, 207; Hendon on Pat., 95.)

"Such a change in an old machine may consist (1) alone of a new and useful combination of the several parts of which it is composed, or (2) it may consist of a material alteration or modification of one or more of the several devices which enter into its construction, or (3) it may consist in adding new devices; and whether it be one or another of the suggested modifications, if the changes of construction and operation actually adapt the machine to a new and valuable use not known before and to which the machine had not been applied, and without the change suggested was not in any degree fitted to be applied, and actually produces a new and useful result, then the case falls within the rule already laid down, and a patent may be granted for the same and upheld. (Phillips *vs.* Page, 24 How., 166; Norman on Pat., 25.)"

In Phillips *vs.* Page, referred to by Judge Clifford, this Court said: "If he (the patentee) had set up in his claim the improvements or particular changes in the construction of the old machine so as to enable him to adapt it to the new use, and one to which the old had not and could not have been applied without these changes, the patent might have been sustained." This is exactly what this appellant and patentee has done by including the adjustable stops in claim 2 of the patent in suit and by his ample specification and the clauses in all the claims referring thereto.

That appellee used a sheath having adjustable stops is proven. (Hackman, questions 10, 13, and 29; Snellen, questions 4 to 10, pages 11 to 17.)

It is respectfully submitted, therefore, that, admitting the existence of the Noyes machine, it is evident that it would

have required changes, such as those in class (1) and class (3), as enumerated by Judge Clifford, to combine the adjustable stop with the two-part sheath, while the changes in the sheath itself were such as would come within the "material alterations" set out in class (2), and that therefore the Peters machine must necessarily have presented such a degree of modification and improvement over the Noyes machine as to render a patent therefor valid.

THE QUESTION OF INFRINGEMENT.

The defense of non-infringement is urged against claim 3, which is as follows:

"(3.) A sheath composed of two grooved bars, A E B E, bolts or screws C, and washers D, whereby the sheath is rendered capable of adjustment to contain moldings of different diameters, as set forth."

The point urged is that the defendant's and appellee's machine has no "washers D;" but Exhibit No. 3 shows appellee's sheath made in two parts bolted together. It has the *capability* of adjustment. Adjustment is secured in appellant's sheath by making the washer D thinner or thicker. At the particular point of adjustment at which appellee's machine was left the washer had become so thin that it disappeared. The moment it was put into use and a molding of greater diameter was to be applied a "washer, D," would be introduced. It was only left out in a vain effort to avoid infringement. The appellant's combination has been adopted in substance.

Moreover, the record shows that such a two-part sheath for this purpose *without* the washer for adjustment is "new and patentable to the inventor," Peters, though not distinctly claimed. None such is disclosed in the evidence brought forward by the appellee, and—

"It is not necessary in order to constitute infringement of a combination, patented as such, that the *whole combination* should be used. If a part of it only, that, separate from the rest, was *new and patentable to the inventor*, is used, taking that part is an infringement *pro tanto*." (Adair *vs.* Thayer, 4 Fed. Rep., 441.)

All of which is most respectfully submitted.

BENJAMIN BUTTERWORTH,
Of Counsel for Appellant.

Office Supreme Court, U. S.
FILED,
JAN 28 1889
JAMES H. McKENNEY,
CLERK.

ADDENDA TO BRIEF.

PETERS
vs.
ACTIVE MANUFACTURING COMPANY. } No. 65.

In the decision dismissing the bill of complaint herein the court below said:

SAGE, *J.:*

This is a suit brought upon letters patent No. 178,463, issued to complainant June 6, 1876, for an improvement in tools for attaching sheet-metal moldings. The specifications set forth the invention of certain new and useful improvements in sheaths or holders for applying moldings to the tops of carriage dash-boards, and that it comprises a peculiarly-constructed sheath or holder wherewith the molding may be applied expeditiously and without bending or buckling or injuring or marring either the molding or dash-board. The sheath may be made of one or more pieces of metal, or it may be made of wood lined with a metallic bushing. When made of two pieces or parts, which is the form preferred by the patentee, the pieces are connected by bolts and washers and grooved, so as to inclose the molding, a key or other suitable stop being fitted within the sheath to prevent the molding slipping through the groove. The sheath has undercut notches to receive the key, which is detachable, and serves as a stop or abutment for the rear end of the molding to rest against. Notches may be cut at such distances from the front end of the sheath as may be required for the various lengths of moldings to be used, or the notches and key may be dispensed with and a screw-top, described in the specification, substituted. The molding consists of a sheet-metal tube having a longitudinal slot or parting, and its forward end is made flaring or trumpet-mouthed, so as not to tear the leather coverings of the dash while the molding is being applied. The dash is held perfectly rigid in clamps, and the sheath containing the mold-

ing and fitting it closely, so as to prevent buckling, is drawn by means of a cord or strap attached to a hook or link pivoted to its front end, and guttered, to avoid contact with the edge of the dash along the upper edge of the dash, which projects above the clamps. As the sheath advances the flaring mouth serves to conduct the leather margin of the dash into the longitudinal slot of the molding, and the sheath, fitting the molding closely, prevents any radial distention, and causes it to be fitted uniformly and securely to the dash. After the molding has been drawn to its place on the dash the sheath may be retracted without withdrawing the molding. The flaring or trumpet end of the molding is then filed off or disposed of in any other suitable manner. While the sheath is being drawn along the top of the dash the molding is impelled forward by the key or stop, and consequently no strain is brought to bear upon the flaring end of the molding. "It is evident," says the patentee in the last sentence of the specification, "that this form of sheath may be advantageously employed for attaching sheet-metal moldings or tubes to various articles, and I reserve the right to use it for any and every purpose that it is capable of."

The first claim is a sheath for applying metallic moldings, said sheath being furnished with a stop for advancing the molding, all substantially for the purpose specified. The second claim is for the sheath described in the specifications, furnished with recesses and a key, or their equivalent stops, as and for the purpose explained. The third claim is for a sheath composed of two grooved bars held to their places by bolts or screws and washings or fillings, whereby it may be adjusted to moldings of different diameters. The fourth claim is for the combination of the grooved bars forming the sheath and guttered hook or shackle described in the specifications for the object stated.

The third and fourth claims need not be considered. None of the sheaths used by respondents contained washers or any substitutes or equivalents therefor whereby they were rendered capable of adjustment to moldings of different diameters, and it was admitted on the hearing that there was no infringement of the fourth claim. The respondents' evidence establishes that, as early as September, 1867, Joseph P. Noyes, a manufacturer of combs at Binghamton, New York, used a machine for putting moldings on combs, in which the molding was held in a sheath fitting it closely,

and having an extension enough smaller to fit the comb. In this extension there was a sliding follower fitted to abut against the end of the comb. At the extreme opposite end of the larger part of the sheath there was a slot across the sheath containing a key or stop to prevent the sliding of the molding. The follower was attached to a slide and lever, so that when a molding was laid in the larger part of the sheath and the comb in the smaller part the comb, being prevented from bending by the walls of the sheath, could be forced into the molding by the action of the slide and lever upon the follower, the molding being prevented from bending by the walls of the part of the sheath within which it was placed. This machine was in use more than three years before the date of the complainant's invention. That this was a comparatively small machine and used only for applying moldings to combs is not material. *Planing Machine Company* v. *Keith*, 101 U. S., 490. Nor is it material that the groove or gutter was so open in cross-section that the molding *e* could be dropped into it. Fig. 6 of the drawings accompanying the letters patent issued to complainant shows a sheath of like shape, and is referred to in the specifications as a modified form of the sheath patented, and the claim is so broad as to cover any sheath of any material, shape, or size for applying moldings to any article.

There is nothing more in the sheath patented to the complainant than an adaptation of the sheath used at Binghamton to the application of moldings to carriage dash-boards—an adaptation which would have occurred to a skilled mechanic without the exercise of the inventive faculty. Had the complainant's invention been first in time and patented the Binghamton sheath would have been an infringement, and, conversely, had the Binghamton sheath been patented the complainant's would have been an infringement. That which infringes if later would anticipate if earlier. *Day* v. *Bankers and Brokers' Telegraph Company*, 9 Blatchf., 345; *Buzzell* v. *Fifield*, 7 Fed. Rep., 465.

The bill is dismissed at complainant's costs.

21 Fed. Rep., 319, 28 Official Gazette, page 1102.

Robert Clarke & Co., Printers.] [*October, 1888.*

Supreme Court of the United States.

OCTOBER TERM, 1888.

GEO. M. PETERS,

Appellant,

No. 65.] *vs.*

THE ACTIVE MANUFACTURING COMPANY.

Appellee.

BRIEF FOR APPELLEE.

ARTHUR STEM,

Counsel for Appellee.

Robert Clarke & Co., Printers.] [*October, 1888.*

Supreme Court of the United States.

OCTOBER TERM, 1888.

GEO. M. PETERS,

Appellant,

No. 65.] *vs.*

THE ACTIVE MANUFACTURING COMPANY.

Appellee.

BRIEF FOR APPELLEE.

The complainant below is appellant.

The suit was brought on letters patent No. 178,463, granted appellant June 6, 1876, for "improvement in tools for attaching sheet metal moldings." The appellee is charged with having infringed by using a similar tool for applying moldings to leather dashes.

The defenses relied upon are:

1. Want of invention.
2. Want of novelty.
3. Non-infringement of the third claim.

The claims of the patent sued on are as follows:

1. A sheath for applying metallic moldings, said sheath being furnished with a stop for advancing the molding, all substantially as and for the purpose specified.

2. The within described sheath for applying metallic moldings, said sheath being furnished with recesses, *f' g'*, and a key, G, or their equivalent stops, as and for the purpose explained.

3. A sheath composed of two grooved bars, A E, B E', bolts or screws, C, and washers, D, whereby the sheath is rendered capably of adjustment to contain moldings, of different diameters, as herein set forth.

The device sought to be covered by complainant's patent is a tool for holding and supporting metal moldings while being slipped upon the top edges of vehicle dashes.

The molding itself and the manner of applying or attaching it to the dash is old, and not claimed to be new. The manner of applying the moldings had been to slip them onto the dashes by hand, and where they fitted tightly to use some force to drive them on. In doing this the operator would use one hand to hold and guide the molding while he would apply driving force with the other hand. He would find in some instances when the molding fitted very tight, that it would bend or buckle up, and so become worthless, hence the necessity of a longer guide than his hand would afford to embrace the molding. This, we maintain, would be self-evident to the operator, and in producing a metal or wooden support or sheath to cover the molding its entire length during the operation of putting it on the dash, no invention or exercise of the inventive faculties would be necessary or required.

So far as the evidence in the case goes, this was done at the outset by each of the parties who attempted to use these moldings, without any inter-communication whatsoever. The device so produced was merely a grooved block or bar, and we submit to the judgment of the court whether the production of this device constituted a patentable invention. We confidently maintain that it did not, and that this question can be decided by the court by an inspection of the patented device without other evidence.

Want of Novelty.

The appellees have proven two prior uses: one at Cincinnati, in 1874, and one at Binghampton, N. Y., in 1867.

Richmond Use.

When the use of sheet metal moldings on dashes began, the necessity for some support for the molding while it was being forced onto the dash was at once apparent. Mr. Emmerson, of Emmerson, Fisher & Co., at once gave orders for the construction of a sheath like the one shown in complainant's patent, except that it was not made in two parts bolted together, for adjustment to large or small moldings. It was made in May, 1874, and at once put into use, and many hundreds of moldings applied with it. See testimony of Richmond, p. 40; Emmerson, p. 45; Fisher, p. 50; Staver, p. 57; Fleecksteiner, p. 62.

This sheath is fully proven, and clearly anticipates the first and second claims of the patent. The third claim is not anticipated by it; neither is the third claim infringed by appellee.

An effort was made by appellant to avoid the effect of this evidence by showing that he had made his invention earlier than May, 1874. His effort to carry back his invention, and at the same time escape the law as to two years' prior use, required very nice swearing, which, however, was supplied, but without satisfactory success.

Noyes' Use.

The appellee clearly proved the use of the tool illustrated by "Exhibit C," p. 141, as early as September, 1867. It was used for applying sheet metal moldings to the back of combs, by Mr. Joseph P. Noyes, at Binghampton, N. Y.

The manner of use was as follows: the molding was laid in the wider groove, C, where it was held from sliding by the key, Fig. 2, slipped into the recess or slot, O. The comb was laid in the narrower groove, or extension of the groove, D. B is a slide carrying a tongue, E, extending down into the groove, and coming against the end of the comb. As this slide was moved by the lever, L, it forced the back of the comb into the molding in the groove, C.

Mr. Noyes testifies, p. 24, as follows:

Q. 7. Can you describe any of the machines used by you for putting moldings on combs?

A. Yes; I have one machine in which the molding is held in a groove, which fits it closely, and the same groove has an extension enough smaller to fit the comb, and in this extension there slides a follower, which is fitted to abut against the end of the comb. At the extreme opposite end of the larger part of the groove there is a slot across the groove containing a key or stop to prevent the molding sliding through the groove. The follower before mentioned is attached to a suitable slide and lever so that when a molding is laid in the larger part of the groove, and the comb in the smaller part, the comb, being prevented from bending by the walls of the groove, can be forced tightly into the molding by the action of the follower, and its connected parts, the molding, being at the same time prevented from bending by the walls of the larger part of the groove.

Q. 8. Can you produce a drawing illustrating the machine above described, and its operation?

A. I here produce a drawing which illustrates said machine. In this drawing, Fig. 1, A, represents the main body of the machine. In the part A, is the groove, C, and its smaller extension, D, in which are placed the molding and the comb, as described in my previous answer. O represents the slot in which is placed the key, marked Fig. 2, E. Fig. 1 represents the follower, B, the slide of which the follower forms a part. L, K, M, and H, the lever and connecting parts by which E and B are operated. Fig. 3 shows an end view of the slide and follower.

Q. 9. In which of the grooves do you place the metallic molding?

A. Into the groove, C.

Q. 10. And into which the comb?

A. Into the groove, D.

Q. 11. In use the key or stop, Fig. 2, is placed in the slot, O, to prevent the metallic molding sliding, is it not?

[Objected to by counsel for complainant as leading and incompetent.]

A. It is.

Q. 12. State whether the groove, C, in the sheath, A, effectually prevents the metallic molding from bending as it is forced over the back of the comb?

[Same objection.]

A. It does.

Q. 13. State how long you have used the above described machine for putting metallic moldings on combs in the manner described?

A. Since September, 1867.

Q. 14. Can you fix the date by any positive evidence besides your memory?

A. I can; I have referred to the time book of the men who made the machines, and find the machine to have been finished at the date named, and remember that it was put into immediate use.

Q. 15. Has it been used ever since?

A. It has been in continued use ever since without any alteration.

Q. 16. Have you ever made any effort to keep its use a secret, or has it always been open to the inspection of any person who might come into your shop?

A. I have made no effort to keep it secret, but the shop has always been open to visitors, and any one could see the machine who cared to look at it."

Noyes is fully confirmed by Yingling (p. 27). The appellee's efforts to rebut this by calling four witnesses to testify that they worked in Noyes' shop, but did not see this device, is of little weight. First, because the testimony was taken without sufficient notice, and no cross-examination was made; second, they have given no reason why the device might not have been there without their seeing it; third, they are not shown the device, or a drawing of it, but are given only a general, uncertain, and not very intelligent description of it, and the fact that they do not recognize the description as applying to any small tool in Noyes' shop they may or may not have seen, is not proof that it did not exist.

This Noyes' device is identical in all material points

with the first and second claims of the patent sued on. It is true, the first claim provides for a "stop for *advancing the molding*" upon the dash, while the Noyes' sheath has a stop for holding the molding stationary while the comb is being "*advanced*" into it. This reversal of the motion, however, is a mere matter of form. The difference is not material.

The first and second claims are clearly anticipated. The third claim is limited to a sheath made in two parts, with interposed washers for rendering the tool adjustable to receive moldings of different sizes. There is no evidence that appellee ever used such a tool. The evidence of infringement consists of the testimony of two former employes of appellee (Haekman, p. 10; Snellen, p. 16), who describe the tool used. Neither of them say it had the washers for adjustment, as provided in the third claim, while appellee has clearly proven that it had not.

There is no legal question involved in this case which is not too well settled to need any argument.

If, after the examination of the patent and the state of the art, that is, the admitted prior use of the moldings and the their application by hand or other means, the court finds that it required any invention to produce a holder or guide for supporting the molding, and keep it from bending while being driven on, then it must examine the facts as to the prior uses. We think it is clearly proven that the patent was fully anticipated.

ARTHUR STEM,

Counsel for Appellee.